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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Avnet, Inc.,

COMPLAINT

Plaintiff,

| VS.

Hitachi Chemical Co., Ltd.;
Hitachi AIC Inc.;
Hitachi Chemical Co. America, Ltd.; ELNA
Co., Ltd.; ELNA America Inc.;
Matsuo Electric Co., Ltd.; TOSHIN KOGYO
Co., Ltd.; Holy Stone Enterprise Co., Ltd.;
Milestone Global Technology, Inc. (D/B/A
Holystone International); Okaya Electric
Industries Co., Ltd.; Okaya Electric America
Inc.; Taitsu Corporation; Taitsu America, Inc.;
Shinyei Kaisha; Shinyei Technology Co.,

JURY TRIAL DEMANDED

1 Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei
2 Corporation of America, Inc.; Nitsuko
3 Electronics Corporation; Nissei Electric Co.,
4 Ltd.; Shizuki Electric Co., Ltd.; Soshin
5 Electric Co., Ltd.; and,
6 Soshin Electronics of America, Inc.,

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Defendants.

1 Plaintiff, Avnet, Inc., brings this action for damages under the antitrust laws of the
2 United States against defendants Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi
3 Chemical Co. America, Ltd.; ELNA Co., Ltd.; ELNA America Inc.; Matsuo Electric Co.,
4 Ltd.; TOSHIN KOGYO., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global
5 Technology, Inc. (D/B/A HolyStone International); Okaya Electric Industries Co., Ltd.;
6 Okaya Electric America Inc.; Taitsu Corporation; Taitsu America, Inc.; Shinyei Kaisha;
7 Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of
8 America, Inc.; Nitsuko Electronics Corporation; Nissei Electric Co., Ltd.; Shizuki
9 Electric Co., Ltd.; Soshin Electric Co., Ltd.; and Soshin Electronics of America, Inc.
10 (collectively, the “Defendants”), and alleges as follows:

11 **I. INTRODUCTION**

12 1. Defendants and their co-conspirators (together, “Conspirators”)
13 formed an international cartel that conducted a long-running conspiracy (the
14 “Conspiracy”) that extended from at least September 1, 1997 through March 31, 2014
15 (the “Conspiracy Period”). The purpose and effect of this conspiracy was to fix,
16 stabilize, and maintain prices for aluminum, tantalum, and film capacitors (together,
17 “Affected Capacitors”).

18 2. Capacitors are integral components found in virtually all electronic
19 devices—from simple household appliances, to computers, automobiles and sophisticated
20 industrial, telecommunication, medical, and aerospace technology products. Capacitors
21 store electrical energy and help regulate the flow of the electrical current as it moves
22 through a circuit.

23 3. Because the functions of capacitors are fundamental to the operation
24 of practically all electronic devices, capacitors are sold in large volume and demand is
25 immense. In 2003, global revenues for all manufacturers in the capacitor industry totaled
26 approximately \$16 billion based on the sales of trillions of capacitors. Industry analysts
27 estimate that global revenues from the sale of capacitors will reach over \$20 billion by
28 2016.

1 4. In spite of their critical functions, the vast majority of capacitors are
2 very small—sometimes the size of a pencil point—and typically cost no more than a few
3 cents, and often as little as a fraction of a cent. Capacitors of like capacitance, dielectric,
4 and form factor also are generally interchangeable despite different manufacturers. As a
5 result, the price of these products is the primary differentiation for purchasers.

6 5. The commoditized nature of capacitors in conjunction with the
7 mature nature of the industry, significantly high barriers to entry, and necessary
8 economies of scale, rendered the capacitors market especially susceptible to
9 anticompetitive manipulation. This allowed and enabled the efforts by Conspirators to
10 raise, maintain, or stabilize prices, or to reduce the supply of Affected Capacitors, which
11 artificially inflated prices above those that would prevail in a competitive market.

12 6. In the advent of the Conspiracy Period, Conspirators had begun to
13 experience reduced profit margins as a result of increased competition among
14 manufacturers of Affected Capacitors and the rise in popularity of considerably cheaper
15 ceramic capacitors. To bolster the profitability of their respective Affected Capacitors
16 sales, and to negate the impact of declining demand on price, Conspirators—commencing
17 as early as September 1997 and continuing throughout the Conspiracy Period—
18 combined, conspired, and agreed to curtail competition of Affected Capacitors among
19 themselves by fixing prices, allocating customers through bid-rigging, and constraining
20 their manufacturing output.

21 7. These anti-competitive agreements and understandings were reached
22 during regular and ad hoc group and bilateral meetings and communications during
23 which Conspirators discussed and coordinated strategy for achieving their desired anti-
24 competitive ends. Conspirators agreed at these meetings and through these
25 communications to uniformly price their competing Affected Capacitors in order to
26 increase profitability. They also discussed how to justify and convey their collusive
27 manufacturing, delivery, and pricing changes to customers and the market.

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1 8. Both in the course of these live meetings, as well as through written
2 and oral communications, Conspirators exchanged confidential and commercially
3 sensitive information regarding Affected Capacitors, including customer and industry-
4 specific price requests, current and future prices, anticipated timing of pricing changes,
5 sales volume, production capacity, production lead times, profitability, and availability
6 and cost of raw materials. Conspirators used this data to determine concerted prices,
7 allocate customers, and otherwise facilitate the Conspiracy.

8 9. Conspirators adhered to these collusive agreements and
9 understandings as they issued bids and price announcements and “negotiated” prices with
10 their customers—selling Affected Capacitors at inflated non-competitive prices
11 throughout the Conspiracy period.

12 10. Competitors for common customers coordinated their respective bids
13 to secure mutual market shares consistent with their production capacities, agreeing in
14 advance which seller should win the bid and what their respective initial and final offers
15 should be to guarantee that outcome. Conspirators urged one another “not to give in” to
16 customers’ requests for price reductions, and to avoid being drawn in to “price wars.”

17 11. Through their collusive, anticompetitive actions, Conspirators
18 effectively negated, and reversed the normal economic benefits of increased competition,
19 and thus cost their customers, including Plaintiff, hundreds of millions of dollars in
20 overcharges.

21 12. Meanwhile, Defendants took pains to conceal their anticompetitive
22 and unlawful conduct from their customers, regulators, and the public. The Conspiracy
23 remained an international secret until the spring of 2014, when law enforcement and
24 competition authorities around the globe first publicly acknowledged their respective
25 investigations into anticompetitive conduct in the capacitors industry. By that time,
26 customers like Plaintiff had been paying artificially inflated prices for Affected
27 Capacitors for approximately 17 years.

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1 13. In 2014, Conspirator Panasonic Corporation, on behalf of itself and
 2 certain of its wholly-owned subsidiaries admitted to the U.S. Department of
 3 Justice (“DOJ”) that Conspirators engaged in a conspiracy to fix the prices of Affected
 4 Capacitors beginning no later than January 1, 2003 and that Conspirators’ cartel activities
 5 were undertaken for the purpose of artificially maintaining and inflating prices of
 6 aluminum, tantalum, and film capacitors sold to United States purchasers and purchasers
 7 worldwide.

8 14. In January 2016, Conspirator NEC TOKIN Corporation pleaded
 9 guilty to violating Section 1 of the Sherman Act by entering into and engaging in a
 10 combination and conspiracy “to suppress and eliminate competition by fixing and rigging
 11 bids of certain electrolytic capacitors in the United States and elsewhere.” The
 12 Information to which NEC TOKIN pleaded guilty dated the Conspiracy from “at least as
 13 early as September 1997” until “in or about January 2014.”

14 15. In April 2016, the DOJ announced that Hitachi Chemical Co. Ltd. agreed
 15 to plead guilty to conspiring with competitors to fix prices for electrolytic capacitors sold to
 16 customers in the United States and elsewhere. The DOJ’s Information against Hitachi Chemical
 17 charged Hitachi Chemical with conspiring with its competitors between 2002 and 2010. On June
 18 9, 2016, Hitachi Chemical pled guilty to conspiring with its competitors to fix the prices of
 19 electrolytic capacitors as charged in the Information.
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21 16. During the Conspiracy Period, Plaintiff purchased Affected
 22 Capacitors in the United States directly from certain Conspirators, and, as a result of the
 23 Conspiracy, paid higher prices than would have prevailed in a competitive market.
 24 Plaintiff thus has suffered damages as a consequence of the Conspiracy, and brings this
 25 action to recover the overcharges it paid for the Affected Capacitors it purchased during
 26 the Conspiracy Period.
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1 **II. JURISDICTION AND VENUE**

2 17. Plaintiff brings this action to recover damages, including treble
 3 damages under Section 4 of the Clayton Act, costs of suit, and reasonable attorneys' fees
 4 arising from Defendants' price-fixing and bid-rigging in violation of Section 1 of the
 5 Sherman Act (15 U.S.C. § 1).

6 18. This Court has subject matter jurisdiction over this action pursuant
 7 to Section 4 of the Clayton Act (15 U.S.C. §§ 15(a)) and 28 U.S.C. §§ 1331 and 1337.

8 19. The activities of Defendants and their co-conspirators, as described
 9 herein, involved U.S. import trade or commerce and/or were within the flow of, were
 10 intended to, and did have a direct, substantial, and reasonably foreseeable effect on
 11 United States domestic and import trade or commerce. This effect gives rise to Plaintiff's
 12 antitrust claims. During the Conspiracy Period, the Conspiracy directly and substantially
 13 affected the price of Affected Capacitors purchased in the United States.

14 20. This Court has jurisdiction over each Defendant named in this action
 15 under Section 12 of the Clayton Act (15 U.S.C. § 22). In addition, Defendants and their
 16 co-conspirators purposefully availed themselves of the laws of the United States as they
 17 manufactured Affected Capacitors for sale in the United States, and their conspiratorial
 18 conduct had a substantial effect on interstate and foreign trade and commerce.

19 21. Venue is proper in the District of Arizona under Section 12 of the
 20 Clayton Act (15 U.S.C. § 22) and 28 U.S.C. § 1331(b), (c) and (d) because a substantial
 21 part of the events giving rise to Plaintiff's claim occurred in this District, a substantial
 22 portion of the affected interstate trade and commerce was carried out in this District, and
 23 one or more of the Defendants reside in this District, is licensed to do business in this
 24 District, and/or transacts business in this District.

25 **III. PARTIES**

26 A. **Plaintiff**

27 22. Plaintiff, Avnet, Inc., is a New York corporation with its principal
 28 place of business in Phoenix, Arizona. Avnet is a major U.S. distributor of electronic

1 components, including capacitors. Avnet directly purchased Affected Capacitors from
2 certain Conspirators during the Conspiracy Period, and has suffered antitrust injury as a
3 result of Defendants' anticompetitive and unlawful conduct.

4 **B. Defendants**

5 **i. Hitachi**

6 23. Defendant Hitachi Chemical Co., Ltd. ("Hitachi Chemical"), is a
7 Japanese corporation with its principal place of business located at Grantokyo South
8 Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo 100-6606, Japan. During the Conspiracy
9 Period, Hitachi Chemical manufactured, sold, and distributed aluminum, tantalum, and
10 film capacitors either directly or through its business units, subsidiaries, agents, or
11 affiliates to United States purchasers.

12 24. Defendant Hitachi AIC Inc. ("Hitachi AIC"), a Japanese corporation,
13 is a wholly-owned subsidiary of Hitachi Chemical with its principal place of business
14 located at 1065, Kugeta, Moka-Shi Tochigi 321-4521, Japan. During the Conspiracy
15 Period, Hitachi AIC—either directly or through its divisions, business units, subsidiaries,
16 agents, or affiliates—sold and distributed to United States purchasers aluminum,
17 tantalum, and film capacitors manufactured by its own business units, subsidiaries,
18 agents, or affiliates or those of its corporate parent, Hitachi Chemical.

19 25. In or about December 2009, Hitachi AIC sold its tantalum and
20 niobium capacitors division to Defendant Holy Stone Enterprise Co., Ltd. The
21 acquisition was completed on or about April 1, 2010, and the tantalum and niobium
22 capacitors division was renamed Holy Stone Polytech Co., Ltd. ("Holy Stone Polytech"),
23 a Japanese corporation and wholly-owned subsidiary of Holy Stone Enterprise Co., Ltd.

24 26. Defendant Hitachi Chemical Co. America, Ltd. ("Hitachi Chemical
25 America"), a New York corporation, is a wholly-owned subsidiary of Hitachi Chemical
26 with its principal place of business located at 10080 North Wolfe Road, Suite SW3-200,
27 Cupertino, California 95014. During the Conspiracy Period, Hitachi Chemical
28 America—either directly or through its business units, subsidiaries, agents, or affiliates—

1 sold and distributed to United States purchasers aluminum and tantalum capacitors
2 manufactured by business units, subsidiaries, agents, or affiliates of its corporate parent,
3 Hitachi Chemical (including, without limitation, Hitachi AIC).

4 27. Defendants Hitachi Chemical, Hitachi AIC, and Hitachi Chemical
5 America are together referred to herein as “Hitachi.”

6 **ii. ELNA**

7 28. Defendant ELNA Co., Ltd. (“ELNA Co.”), is a Japanese corporation
8 with its principal place of business located at 3-8-11 Shin-Yokohama, Kohoku-ku,
9 Yokohama, Kanagawa Prefecture 222-0033, Japan. During the Conspiracy Period,
10 ELNA Co. manufactured, sold, and distributed aluminum, tantalum, and film capacitors
11 either directly or through its business units, subsidiaries, agents, or affiliates, to United
12 States purchasers.

13 29. Defendant ELNA America Inc., (“ELNA America”) a California
14 corporation, is a wholly-owned subsidiary of ELNA Co. with its principal place of
15 business located at 879 West 190th Street, Suite 100, Gardena, California 90248. During
16 the Conspiracy Period, ELNA America—either directly or through its business units,
17 subsidiaries, agents, or affiliates—sold and distributed to United States purchasers
18 aluminum, tantalum, and film capacitors manufactured by business units, subsidiaries,
19 agents, or affiliates of its corporate parent, ELNA Co.

20 30. Defendants ELNA Co. and ELNA America are together referred to
21 herein as “ELNA.”

22 **iii. Matsuo**

23 31. Defendant Matsuo Electric Co., Ltd. (“Matsuo”) is a Japanese
24 corporation with its principal place of business located at 3-5- Sennari-cho, Toyonaka-
25 shi, Osaka 561-8558, Japan. During the Conspiracy Period, Matsuo manufactured, sold,
26 and distributed aluminum, tantalum, and film capacitors either directly or through its
27 business units, subsidiaries, agents, or affiliates to United States purchasers.

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1 **iv. TOSHIN KOGYO**

2 32. Defendant TOSHIN KOGYO Co., Ltd. (“TOSHIN KOGYO”) is a
3 Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4,
4 Uchikanda Chiyoda-ku, Tokyo, Japan. During the Conspiracy Period, TOSHIN KOGYO
5 manufactured, sold, and distributed aluminum, tantalum, and film capacitors either
6 directly or through its business units, subsidiaries, agents, or affiliates, to United States
7 purchasers.

8 **v. Holy Stone**

9 33. Defendant Holy Stone Enterprise Co., Ltd. (“Holy Stone
10 Enterprise”) is a Taiwanese corporation with its principal place of business at 1 Floor,
11 No. 62, Sec. 2, Huang Shan Road, Nei Hu District, Taipei, Taiwan. During the
12 Conspiracy Period, Holy Stone Enterprise manufactured, sold, and distributed tantalum
13 capacitors, either directly or through its business units, subsidiaries, agents, or affiliates to
14 United States purchasers.

15 34. In or about December 2009, Holy Stone Enterprise publicly
16 announced its acquisition of Hitachi AIC’s tantalum and niobium capacitors division.
17 The acquisition was completed on or about April 1, 2010, and that division was operated
18 under the name of Holy Stone Polytech.

19 35. Defendant Milestone Global Technology, Inc. (“Milestone”)—which
20 does business as HolyStone International (“HolyStone International”), an entity which
21 Holystone Enterprise publicly claims to be a “subsidiary company” of Holy Stone
22 Enterprise and its “direct sales office for North America”—is a California corporation
23 with its principal place of business located at 27475 Ynez Road #288, Temecula,
24 California 92591.

25 36. From in or about December 2009, Milestone, doing business as
26 HolyStone International—either directly or through its business units, subsidiaries,
27 agents, or affiliates—sold and distributed to United States purchasers tantalum capacitors
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1 manufactured by business units, subsidiaries, agents, or affiliates of its corporate parent,
2 Holy Stone Enterprise (including, without limitation, Holy Stone Polytech).

3 37. Holy Stone Enterprise, Holy Stone Polytech and Milestone, doing
4 business as HolyStone International, are together referred to herein as “Holy Stone.”

5 **vi. Okaya**

6 38. Defendant Okaya Electric Industries Co., Ltd. (“Okaya Co.”) is a
7 Japanese corporation with its principal place of business located at 16-9, Todoroki 6
chome, Setagaya-ku, Tokyo 158-8543, Japan. During the Conspiracy Period, Okaya Co.
8 manufactured, sold, and distributed film capacitors either directly or through its business
9 units, subsidiaries, agents, or affiliates to United States purchasers.

10 39. Defendant Okaya Electric America Inc. (“Okaya America”), an
11 Indiana corporation, is a wholly-owned subsidiary of Okaya Co. with its principal place
12 of business located at 52 Marks Road, Suite 1, Valparaiso, Indiana 46383. During the
13 Conspiracy Period, Okaya America—either directly or through its business units,
14 subsidiaries, agents, or affiliates—sold and distributed to United States purchasers film
15 capacitors manufactured by business units, subsidiaries, agents, or affiliates of its
16 corporate parent, Okaya Co.

17 40. Defendants Okaya Co. and Okaya America are together referred to
18 herein as “Okaya.”

19 **vii. Taitsu**

20 41. Defendant Taitsu Corporation (“Taitsu Corp.”) is a Japanese
21 corporation with its principal place of business located at 2-23-20, Kizuki, Nakahara-ku,
22 Kawasaki, Kanagawa 211-0025, Japan. During the Conspiracy Period, Taitsu Corp.
23 manufactured, sold, and distributed film capacitors either directly or through its business
24 units, subsidiaries, agents, or affiliates to United States purchasers.

25 42. Defendant Taitsu America, Inc. (“Taitsu America”), a California
26 corporation, is a wholly-owned subsidiary of Taitsu Corp. with its principal place of
27 business located at 6160 Mission Gorge Road, Suite 100, San Diego, California 92120.

1 During the Conspiracy Period, Taitsu America—either directly or through its business
2 units, subsidiaries, agents, or affiliates—sold and distributed to United States purchasers
3 film capacitors manufactured by business units, subsidiaries, agents, or affiliates of its
4 corporate parent, Taitsu Corp.

5 43. Defendants Taitsu Corp. and Taitsu America are together referred to
6 herein as “Taitsu.”

7 **viii. Shinyei**

8 44. Defendant Shinyei Kaisha (“Shinyei Kaisha”) is a Japanese
9 corporation with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe
10 651-0178, Japan. During the Conspiracy Period, Shinyei Kaisha manufactured, sold, and
11 distributed film capacitors either directly or through its business units, subsidiaries,
12 agents, or affiliates to United States purchasers.

13 45. Defendant Shinyei Technology Co., Ltd. (“Shinyei Tech”) is a
14 Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place
15 of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. Until February
16 2011, Shinyei Tech—either directly or through its business units, subsidiaries, agents, or
17 affiliates—manufactured, sold, and distributed to United States purchasers film
18 capacitors manufactured by its own business units, subsidiaries, agents, or affiliates, or
19 those of Shinyei Kaisha.

20 46. Defendant Shinyei Capacitor Co., Ltd. (“Shinyei Capacitor”) is a
21 Japanese corporation and a corporate “affiliate” of Shinyei Kaisha with its principal place
22 of business located at Shinagawa Crystal Square 11F, 1-6-41 Konan, Minato-ku, Tokyo
23 108-0075, Japan. Starting in or about February 2011, Shinyei Capacitor was established
24 by Shinyei Kaisha to take over the film capacitors business of Shinyei Tech. After in or
25 about February 2011, Shinyei Capacitor—either directly or through its business units,
26 subsidiaries, agents, or affiliates—manufactured, sold, and distributed to United States
27 purchasers film capacitors manufactured by its own business units, subsidiaries, agents,
28 or affiliates, or those of Shinyei Kaisha (including, without limitation, Shinyei Tech).

1 47. Defendant Shinyei Corporation of America, Inc. (“Shinyei
 2 America”) is a Delaware corporation and a wholly-owned subsidiary of Shinyei Kaisha
 3 with its principal place of business located at 1120 Avenue of the Americas, 4th Floor,
 4 New York, New York 10036. During the Conspiracy Period, Shinyei America—either
 5 directly or through its own business units, subsidiaries, agents and affiliates or those of
 6 Shinyei Kaisha—sold and distributed to United States purchasers film capacitors
 7 manufactured either directly by Shinyei Kaisha or through Shinyei’s business units,
 8 subsidiaries, agents and affiliates (including, without limitation, Shinyei Capacitor and
 9 Shinyei Tech).

10 48. Defendants Shinyei Kaisha, Shinyei Capacitor, and Shinyei America
 11 are together referred to herein as “Shinyei.”

12 **ix. Nitsuko**

13 49. Defendant Nitsuko Electronics Corporation (“Nitsuko”) is a
 14 Japanese corporation with its principal place of business located at 2031-1, Ogawara,
 15 Suzaka-shi, Nagano-ken, 382-0071, Japan. During the Conspiracy Period, Nitsuko
 16 manufactured, sold, and distributed film capacitors either directly or through its business
 17 units, subsidiaries, and affiliates to United States purchasers.

18 **x. Nissei**

19 50. Defendant Nissei Electric Co. Ltd. (“Nissei”) is a Japanese
 20 corporation with its principal place of business located at 201, Motodate, Hanamaki,
 21 Iwate, 025-0061, Japan. During the Conspiracy Period, Nissei manufactured, sold, and
 22 distributed film capacitors either directly or through its business units, subsidiaries
 23 agents, and affiliates to United States purchasers.

24 **xi. Shizuki**

25 51. Defendant Shizuki Electric Co., Ltd. (“Shizuki”) is a Japanese
 26 corporation with its principal place of business located at 10-45 Taisha-cho, *Nishinomiya*,
 27 Hyogo 662-0867, Japan. During the Conspiracy Period, Shizuki manufactured, sold, and
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1 distributed film capacitors either directly or through its business units, subsidiaries,
2 agents, or affiliates to United States purchasers.

3 **xii. Soshin**

4 52. Defendant Soshin Electric Co., Ltd. (“Soshin Co.”) is a Japanese
5 corporation with its principal place of business located at 3-13-16, Mita, Minato-ku,
6 Tokyo 108-8322, Japan. During the Conspiracy Period, Soshin manufactured, sold, or
7 distributed film capacitors either directly or through its business units, subsidiaries,
8 agents, and affiliates to United States purchasers.

9 53. Defendant Soshin Electronics of America Inc. (“Soshin America”), a
10 California corporation, is a wholly-owned subsidiary of Soshin Co. with its principal
11 place of business located at 2520 Mission College Boulevard #104, Santa Clara,
12 California 95054. During the Conspiracy Period, Soshin America—either directly or
13 through its business units, subsidiaries, agents, or affiliates—sold and distributed to
14 United States purchasers film capacitors manufactured by business units, subsidiaries,
15 agents, or affiliates of its corporate parent, Soshin Co.

16 54. Defendants Soshin Co. and Soshin America are referred to
17 collectively herein as “Soshin.”

18 **C. AGENTS AND CO-CONSPIRATORS**

19 55. The anticompetitive and unlawful acts alleged against the
20 Conspirators in this Complaint were authorized, ordered, or executed by their respective
21 directors, officers, agents, employees, or representatives, while actively engaged in the
22 management, direction, or control of Conspirators’ businesses or affairs.

23 56. Each Conspirator acted as the principal, agent, or joint venturer of or
24 for other Conspirators with respect to the acts, violations, and common course of conduct
25 alleged in this Complaint. Each Conspirator that is a subsidiary of a foreign parent acts
26 as the U.S. agent for Affected Capacitors made by its parent company. As alleged more
27 fully below, each Conspirator headquartered outside the United States relied on its agents
28 in the United States to carry out, enforce, and conceal the cartel in the United States.

1 57. Various individuals, partnerships, corporations, associations,
2 persons, and/or firms not named as Defendants in this Complaint participated as co-
3 conspirators in the violations alleged herein and performed acts and made statements in
4 furtherance of the Conspiracy. These co-conspirators who are not named as Defendants
5 include, but are not limited to, Panasonic Corporation, which operated during part of the
6 Conspiracy Period under the name Matsushita Electric Industrial Co., Ltd. (“Matsushita”,
7 and together with Panasonic Corporation, “Panasonic Corp.”), Panasonic Corporation of
8 North America (“PCNA”; Panasonic Corp. and PCNA are together referred to herein as
9 “Panasonic”), SANYO Electric Co., Ltd., SANYO North America Corporation, NEC
10 TOKIN Corporation (“NEC TOKIN Corp.”), NEC TOKIN America, Inc. (“NEC TOKIN
11 America”; NEC TOKIN Corp. and NEC TOKIN America are together referred to herein
12 as “NEC TOKIN”), Nippon Chemi-Con Corporation (“NCC”), United Chemi-Con
13 Corporation (“UCC”; NCC and UCC are together referred to as “Nippon Chemi-Con”),
14 KEMET Corporation (“KEMET Corp.”), KEMET Electronics Corporation (“KEC”;
15 KEMET Corp. and KEC are together referred to herein as “KEMET”), Nichicon
16 Corporation (“Nichicon Corp.”), Nichicon (America) Corporation (“Nichicon America”),
17 FPCAP Electronics (Suzhou) Co., Ltd. (“FPCAP”; Nichicon Corp., Nichicon America
18 and FPCAP are together referred to herein as “Nichicon”), Fujitsu Ltd. (“Fujitsu”),
19 Fujitsu Media Devices, Ltd. (“FMD”), AVX Corporation (“AVX”), Rubycon
20 Corporation (“Rubycon Corp.”), Rubycon America Inc. (“Rubycon America”; Rubycon
21 Corp. and Rubycon America are together referred to herein as “Rubycon”), and ROHM
22 Co., Ltd. (“ROHM Co.”), ROHM Semiconductor U.S.A., LLC (“ROHM USA”; ROHM
23 Co. and ROHM USA, are together referred to herein as “ROHM”).

24 **IV. TRADE AND COMMERCE**

25 58. During the Conspiracy Period, each Defendant, directly or through
26 one or more of its parents, affiliates, subsidiaries, or business units sold or delivered to
27 U.S. purchasers aluminum, tantalum, or film capacitors in a continuous and uninterrupted
28 flow of interstate commerce, including through and into this judicial district. By way of

1 example, the following Defendants assisted their respective corporate parent Defendants
2 with the sale or delivery to United States purchasers of the parents' respective aluminum,
3 tantalum, or film capacitors: Hitachi Chemical America; ELNA America; Milestone
4 (doing business as HolyStone International); Okaya America; Taitsu America; Shinyei
5 America; and Soshin America.

6 59. Conspirators engaged in illegal conduct both inside and outside of
7 the United States that caused direct, substantial, and reasonably foreseeable
8 anticompetitive effects on commerce throughout the United States.

9 60. During the Conspiracy Period, Conspirators collectively controlled
10 the markets for Affected Capacitors both globally and in the United States.

11 61. The United States is a large and important market for Affected
12 Capacitors. Sales in the U.S. account for a significant portion of Conspirators' revenues.
13 As such, the U.S. capacitors market was a major focus of the Conspiracy.

14 62. Conspirators knowingly and intentionally sent price-fixed and bid-
15 rigged Affected Capacitors into the stream of commerce of the United States. Such
16 conduct was meant to produce and did in fact produce a substantial harmful effect on
17 U.S. commerce in the form of artificially high prices being paid for Affected Capacitors
18 by U.S. customers, including Plaintiff.

19 63. Affected Capacitors manufactured abroad by Conspirators and sold
20 in the United States constitute domestic or import commerce.

21 64. To the extent any Affected Capacitors were purchased by Plaintiff,
22 and these purchases do not constitute domestic or import commerce, Defendants'
23 unlawful activities with respect thereto, as more fully alleged herein, had, and continue to
24 have, a direct, substantial, and reasonably foreseeable effect on United States commerce
25 that gives rise to the claims asserted herein.

26 65. The unlawful conduct described herein, and its anticompetitive
27 effect on U.S. commerce, proximately caused antitrust injury to Plaintiff in the United
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1 States in the form of supracompetitive prices for Affected Capacitors, which were the
 2 natural, foreseeable, and intended consequence of Defendants' anticompetitive conduct.

3 **V. FACTUAL ALLEGATIONS**

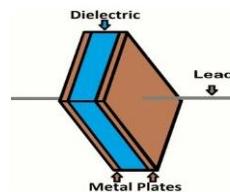
4 **A. Background**

5 **i. What are Capacitors?**

6 66. Capacitors are passive electronic components that play a crucial role
 7 in electrical circuits. Virtually every electrical circuit contains one or more capacitors.

8 67. Capacitors serve as reservoirs of electric energy. They do not
 9 require electrical power to operate; their physical properties cause them to naturally
 10 perform their function—namely to regulate the electrical current flowing through a
 11 circuit in accordance with the particular demands of the devices in which they are
 12 contained. The amount of charge the capacitor can hold at a given voltage defines its
 13 capacitance, and capacitors ensure that the load current demands of the circuits and
 14 devices in which they are installed are met.

15 68. Every capacitor consists of two or more parallel conductive metal
 16 plates, each separated from the next by a layer of non-conductive insulating material
 17 called a "dielectric." Each plate is attached to a wire referred to as a "lead," which
 18 connects it to the rest of the circuit.



19 22 *A basic capacitor: an insulating dielectric sandwiched between two metal plates.*

20 69. When electric current flows into the capacitor via the leads, one
 21 plate acquires a positive charge, and the other, a negative charge, creating an electric field
 22 between the two plates. The opposite charges attract but can never reach each other
 23 because of the dielectric that separates them, allowing the capacitor to hold its charge.

24 70. There are three main categories of capacitors: electrostatic,
 25 electrolytic, and electrochemical. The Conspiracy affected the markets for electrolytic

1 capacitors, specifically aluminum and tantalum capacitors (named for their conductive
2 materials) and electrostatic capacitors, specifically film capacitors (named for their
3 insulating materials).

ii. Electrolytic Capacitors: Aluminum and Tantalum

5 71. Electrolytic capacitors are polarized, meaning that they have to be
6 positioned in a particular direction within an electrical circuit (with the positive lead
7 facing the positive side of the power source, and the negative lead facing the negative
8 side). Their polarized nature gives them a higher capacitance than their electrostatic
9 counterparts, allowing for more sophisticated applications.

10 72. Aluminum and tantalum capacitors, named for the metals of which
11 they are comprised, are two of the most popular forms of electrolytic capacitors.
12 Aluminum and tantalum capacitors were subjects of the Conspiracy.

iii. Electrostatic Capacitors: Film

14 73. Electrostatic capacitors are not polarized and therefore can be
15 installed in either direction. They have a lower capacitance than their electrolytic
16 counterparts, but allow for stable and sustained usage at a low cost.

17 74. Film capacitors, which are a type of electrostatic capacitors, employ
18 a layer of plastic film as their insulating dielectric. Film capacitors were a subject of the
19 Conspiracy.

VI. MARKET CHARACTERISTICS AND TRENDS THAT FACILITATED AND MOTIVATED THE CONSPIRACY

22 75. A number of characteristics made the capacitors industry particularly
23 prone to successful price-fixing and bid-rigging during the Conspiracy Period.
24 Conspirators were aware of each of the factors described below and exploited them to
25 achieve their injurious anti-competitive ends throughout the Conspiracy Period.

A. Complete Commoditization

76. In spite of their crucial functions, capacitors are commoditized
products. Most are small and simple, typically costing no more than a few cents, and

1 sometimes as little as a fraction of a cent. Across the global market, capacitors of the
 2 same form, dielectric, and capacitance produced by different manufacturers can be freely
 3 substituted for one another, rendering one brand essentially indistinguishable from any
 4 other. Indeed, manufacturers of products incorporating capacitors often utilize several
 5 different brands of the same type of capacitor interchangeably within a single device.

6 77. As Conspirators recognized prior to and throughout the Conspiracy
 7 Period, the interchangeability of different brands of capacitors rendered the market
 8 especially susceptible to anticompetitive manipulation. Pricing is the primary differential
 9 between competitors and, accordingly, the principal basis upon which purchasing
 10 decisions on Affected Capacitors are made. Therefore, curtailing price competition, as
 11 Conspirators did here, effectively eliminated competition.

12 78. Moreover, as a result of the interchangeability of their product
 13 offerings, Conspirators were able to more readily agree on uniform prices and more
 14 easily detect any Conspirator's failure to adhere to those prices.

15 **B. Market Concentration**

16 79. Together, Conspirators accounted for the majority of Affected
 17 Capacitors sales both globally and in the United States throughout the duration of the
 18 Conspiracy period. In 2014, the final year of the Conspiracy, Conspirators collectively
 19 accounted for over 70% of Affected Capacitors sales.

20 80. Given their collective domination of the Affected Capacitors market,
 21 Conspirators were able to control the overall pricing and supply of Affected Capacitors
 22 throughout the Conspiracy Period. Non-participants did not have strong enough market
 23 power to undercut the cartel's concerted pricing and meet all or a significant part of the
 24 demand for Affected Capacitors.

25 **C. Barriers to Entry**

26 81. High barriers to entry in the capacitors market also allowed
 27 Conspirators to maintain their dominance despite charging supracompetitive prices.

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1 82. The commoditized nature and low profit margins of capacitors create
2 a landscape in which profitability depends on achieving large economies of scale. The
3 capacitors industry is a mature one dominated by established corporations, each having
4 multinational operations, global market reach, and diverse product portfolios of various
5 types of passive electrical components. Conspirators have significant experience in the
6 global capacitors industry and established reputations with both sellers of raw materials
7 and purchasers of finished capacitors. They have access to significant financial resources
8 that allow them to commit the capital necessary to bring online new fabrication
9 operations and facilities or to expand/retrofit existing ones to meet and exceed market
10 demand and adjust to technological changes. This readily available access to capital also
11 permits manufacturers like Conspirators to establish and secure necessary supply chain
12 commitments for all raw materials they require. Many Conspirators have developed
13 internal processing capabilities for raw materials or have established relationships with
14 raw materials producers to ensure that their requirements will be met.

15 83. Before it can compete with established players like Conspirators, a
16 new entrant in the capacitors market must invest hundreds of millions of dollars to build
17 fabrication plants, acquire the necessary production technology, hire and retain skilled
18 and knowledgeable manpower, secure the raw materials and supply chain commitments
19 necessary to manufacture competitive products, and market its products to potential
20 purchasers.

21 84. No notable new manufacturers have entered the aluminum, tantalum,
22 or film capacitors industries in well over a decade, other than through strategic alliances
23 or acquisition of companies or business units already producing specific electrolytic
24 capacitor products (*e.g.*, Hitachi AIC's sale of its tantalum capacitor production
25 operations to Holy Stone in 2009).

26 **D. Weak Demand**

27 85. Conspirators were motivated by the need to stabilize prices and
28 maintain their investment in Affected Capacitors in the face of declining demand.

1 86. According to a leading capacitors industry analyst, global
2 consumption of aluminum, tantalum, and film capacitors has been declining for over a
3 decade. Consumption of tantalum capacitors dropped from approximately 2.4% of global
4 volume for fiscal year 2003 to an estimated 1.1% for 2014. Consumption of aluminum
5 capacitors dropped from approximately 10.2 % for fiscal year 2003 to an estimated 6.8%
6 for fiscal year 2014. Consumption of film capacitors dropped from approximately 2.5%
7 for fiscal year 2003 to an estimated 1.1% for fiscal year 2014.

8 87. Though Affected Capacitors are used in a wide array of devices,
9 demand for Affected Capacitors over the past decade or so has been largely tied to the
10 demand for consumer electronics. For instance, one of the Conspirators' 2013 annual
11 report states that the company's 21.7% decrease in capacitor sales "is attributed to
12 declining demand for digital home electronics and inverter equipment."

13 88. In particular, personal computers have historically accounted for a
14 significant portion of global capacitor consumption, but that segment has experienced
15 decreasing sales since the early 2000s. Industry analysts have indicated that declining
16 demand for these products has negatively impacted the demand for aluminum and
17 tantalum capacitors. Aluminum and tantalum capacitors manufacturers have historically
18 derived close to 50% of their revenues from the computer market.

19 89. In addition, the consumer audio-video segment, which has also
20 historically accounted for a significant portion of global capacitor consumption, has also
21 faced significant decreasing sales over the last decade because portable music devices,
22 tablets, and smart phones have replaced them in meeting consumers' audio-visual needs.
23 The fall-off of the audio-visual market had a significant impact on the demand for
24 aluminum and film capacitors.

25 90. During the 2008 recession, shrinking automobile sales further
26 diminished demand for Capacitors. MK Meeting notes state, *inter alia*, "The automotive
27 sales in the United States were less than 1 million units in September. It was the first
28 since February 1993. The conditions are very gloomy[;]" "The sales for in-vehicle

1 applications in main markets are not good and there is no way out in sight[;]" "Car-
 2 related business is particularly bad and sales will decrease by about 30%.... Conductive
 3 product sales will decrease by 40% [from the prior month]."

4 91. An October 15, 2008 Competitor Trend Report based on a recent
 5 "JFC" (Japanese Film Capacitors) group meeting notes that film capacitor orders
 6 received by each competitor "stay low because of economic slump in North America, no
 7 positive forecast is being observed for 2009."

8 92. Additionally, immediately prior to and throughout the Conspiracy
 9 Period, ceramic capacitors began to compromise Affected Capacitors sales. Ceramic
 10 capacitors are electrostatic in nature, and utilize ceramic as their dielectrics. The low cost
 11 and malleability of ceramic makes it a superior alternative to Affected Capacitors in many
 12 applications. Capacitance is traditionally a function of a capacitor's surface area.
 13 Because of ceramic's plasticity, many alternating layers of ceramic and metal can be
 14 tightly "stacked," increasing surface area and thus capacitance, without significantly
 15 growing the size of the capacitor. The resulting products, introduced in the late 1990s,
 16 are known as "MLCCs" (multilayer ceramic capacitors).

17 93. Throughout the Conspiracy Period, ceramic capacitors continued to
 18 rise in prominence, while growing cheaper and cheaper. Currently, the price of MLCCs
 19 is, on average, only a fraction of the price of aluminum, tantalum, and film capacitors,
 20 with an average per unit price of approximately \$.0006. Even the cheapest Affected
 21 Capacitors can be 100 times more expensive on a per unit basis. A 2011 industry report
 22 circulated by one of the Conspirators states, "Because all customers changed what they
 23 could to MLCC due to the impact of price increases, demand [for manganese tantalum
 24 capacitors] decreased suddenly. The decrease was 20 to 30% compared to last year. It
 25 will just continue to decrease from now on too[.]"

26 94. As a result, during the Conspiracy Period, many original equipment
 27 manufacturers and component manufacturers invested the enormous time and expense
 28 required to redesign the electrical circuits in the products they produce to replace

1 aluminum, tantalum, or film capacitors with ceramic capacitors. For example, March 11,
 2 2009 MK Meeting Notes state that, in contrast to the prior models, Samsung's new LCD
 3 TV model would incorporate MLCC capacitors rather than tantalum capacitors "so no
 4 more orders are expected."

5 95. As a result of the above market trends, producers were left with
 6 excess supply and insufficient demand for Affected Capacitors to maintain their
 7 investment. Faced with increased requests by purchasers for price reductions,
 8 Conspirators feared that price competition would reduce, if not eliminate, profitability for
 9 Conspirators' Affected Capacitor-manufacturing operations.

10 96. Under normal business conditions, when confronted with weak
 11 demand conditions, firms will attempt to maintain their sales by taking market share from
 12 competitors through decreasing prices. For this reason, firms faced with static or
 13 declining demand have a greater incentive to collude with competitors to avoid price
 14 competition and profit erosion.

15 97. MK Meeting Notes from 2008 reflect the following common
 16 sentiment amongst Conspirators: "In this situation, if we struggle to improve the
 17 business, it will cause further decrease in prices, leading to decreased profitability. But if
 18 the production decreases, the management demands an increase in the sales in their
 19 natural course of action."

20 98. In order to stabilize prices, Conspirators engaged in a combination
 21 and conspiracy to suppress and eliminate competition by fixing prices, limiting supply,
 22 and rigging bids for Affected Capacitors sold in the United States and elsewhere.

23 **E. Inelastic Demand**

24 99. Demand inelasticity for Affected Capacitors further facilitated the
 25 Conspiracy, allowing Conspirators to raise prices to suprareactive prices without
 26 significantly undermining sales volumes.

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1 100. Demand inelasticity means that price variations do not significantly
2 impact sales volumes. This phenomenon is experienced when a product has an important
3 function, but has few or no practical substitutes.

4 101. There are three primary categories of direct purchasers for Affected
5 Capacitors: (1) original equipment manufacturers (“OEMs”) who incorporate capacitors
6 into their finished electronic products; (2) component manufacturers (“CMs”) who
7 manufacture and assemble circuit boards and other electric circuit products that are
8 integrated into finished electronic products, and (3) electronic component distributors
9 who buy capacitors for resale to OEMs and CMs. Plaintiff falls into this third category.
10 All of these purchasers buy Affected Capacitors in large volume, as everyday electronics
11 may contain dozens or even hundreds of capacitors.

12 102. Demand—particularly short and medium term demand—is inelastic
13 for aluminum, tantalum, and film capacitors. As set forth above, capacitors are a
14 fundamental and necessary component of a vast array of electronic products. While
15 different brands of like capacitors are mutually interchangeable, different forms of
16 capacitors typically are not. Electric circuits are designed to accommodate capacitors
17 with specific capacitances, materials, and shapes (i.e., “form factors”). Thus, even with
18 the technological and material advancements to ceramic capacitors, a product or
19 component manufacturer would in many instances have to redesign and re-engineer the
20 relevant circuits of its products to accommodate a substitute—which could prove
21 enormously expensive and time-consuming. Although over time original equipment and
22 component manufacturers made the investments necessary to redesign certain of their
23 products to allow for the lower cost ceramic capacitors, that transition did not impact the
24 short and medium-term demand for Affected Capacitors, which remained inelastic.
25 Notably, purchasers of Affected Capacitors often faced strict deadlines tied to promised
26 product delivery dates that deprived them of meaningful choice in the face of
27 supracompetitive prices.

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1 103. Further, capacitors typically account for a very small percentage of
 2 the production cost of the finished electronic devices in which they are contained.
 3 Notwithstanding their critical functions, nearly all Affected Capacitors cost well under \$1
 4 per unit, with most costing no more than a few cents, and many costing mere fractions of
 5 a cent. Therefore, even a significant increase in the price of Affected Capacitors would
 6 have a minimal effect on the purchase price of electronic devices.

7 **F. Large Number of Purchasers With Limited Purchasing Power**

8 104. In the markets for aluminum, tantalum, and film capacitors,
 9 Conspirators sell to a wide number of purchasers around the globe, the vast majority of
 10 which during the Conspiracy Period made up no more than 10% of each Conspirator's
 11 respective annual net sales, year over year.

12 105. Conspirators were therefore able to avoid even their most valuable
 13 clients' requests for better terms, providing lockstep prices and production lead times to
 14 purchasers who tried to shop around for the best deal. An internal email from one of the
 15 Conspirators dated December 2007 states: "Member companies are increasing their
 16 prices. Although I am afraid our good clients will request reduction, we will not need to
 17 reduce our prices."

18 **G. Ease of Information Sharing Among Conspirators**

19 106. Because of their common trade associations and existing
 20 interrelationships, Conspirators had many opportunities both before and during the
 21 Conspiracy Period to discuss and exchange competitive information regarding the pricing
 22 and supply of Affected Capacitors.

23 107. Various Conspirators have attended bi-annual meetings of the World
 24 Capacitors Trade Statistics program since its inception in 1986. This program was
 25 formed for the purpose of collecting and disseminating monthly statistics on world
 26 shipments of capacitors.

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1 108. The World Capacitors Trade Statistics program includes Japanese,
 2 American, and European trade organizations that provided networking opportunities for
 3 Conspirators.

4 109. Aside from these organizations' formal gatherings, during which
 5 Conspirators were able to discuss and exchange sensitive competitive information,
 6 Conspirators also have numerous business connections between their former and current
 7 colleagues, co-venturers, or partners employed by other Conspirator companies. Key
 8 decision-makers for the major producers have both direct and indirect personal access to
 9 one another. These relationships were also exploited to further the Conspiracy and
 10 exchange sales intelligence.

11 **VII. THE CONSPIRACY**

12 **A. Price-Fixing, Supply Constraint, and Bid-Rigging**

13 110. In order to maintain the value of their investments in Affected
 14 Capacitors in the face of waning demand and deteriorating market conditions,
 15 Conspirators combined, conspired, and contracted to suppress and eliminate competition
 16 for Affected Capacitors sales by fixing prices, constraining supply, and rigging bids.
 17 This occurred for the duration of the Conspiracy Period, which ranged from at least
 18 September 1997 through approximately March 2014.

19 111. Conspirators charged their customers supracompetitive prices
 20 determined by both oral and written agreements, understandings, and exchanges of
 21 sensitive competitive information provided by each Conspirator. Conspirators' electronic
 22 communications and cartel meeting notes from throughout the Conspiracy Period include
 23 statements like: “[C]apacitors are running short in the market and there is no better
 24 timing than now for us to raise prices.” “Let's stop this meaningless competition.”
 25 “That's too cheap! Put your price up!” “Let us proceed while exchanging information so
 26 that we are not taken for a ride by customers.” “Our past competition for winning market
 27 share resulted in an extremely severe situation of the industry as a whole . . . we wish to
 28 ////

1 cooperate with you so that the industry will be back to life again. We kindly ask for your
2 continued cooperation.”

3 112. Conspirators exchanged information regarding fixed and variable
4 input costs that impacted their product pricing (*e.g.*, raw materials costs, labor costs),
5 sales volumes, profitability, current prices, intended future prices, production capacity,
6 market forecasts, customer, product and industry-specific pricing demands, and proposed
7 responses thereto. Conspirators provided one another with this secret business
8 intelligence during formal cartel meetings, ad hoc meetings between subsets of
9 Conspirators, and through miscellaneous written and oral communications.

10 113. Conspirators monitored the prices of their fellow cartel members
11 during the Conspiracy Period and punished those who strayed from the agreed pricing,
12 typically through temporary exclusion from cartel meetings and other informational
13 exchanges.

14 114. Additionally, at times during the Conspiracy Period, “cheaters” were
15 reprimanded during cartel meetings for pursuing their individual interests over those of
16 the cartel by failing to adhere to the Conspirators’ price-fixing agreements.

17 115. In order to justify and maintain their inflated prices, Conspirators
18 further agreed to reduce production in order to prevent excess supply from further
19 diminishing prices.

20 116. Notes from an October 8, 2008 MK Meeting, remarked that
21 Conspirators, including Defendants Matsuo, ELNA, and Hitachi commonly agreed: “if
22 we struggle to improve the business, it will cause further decrease in prices, leading to
23 decreased profitability. But if the production decreases, the management demands an
24 increase in the sales in their natural course of action.”

25 117. Conspirators coordinated to quote similar or identical production
26 lead times (elapsed time between placement of the order and delivery of the goods) to
27 purchasers in order to manipulate the balance of supply and demand in Conspirators’
28 ////

1 favor. This coordination permitted Conspirators to mete out the supply of their products,
2 thereby artificially restricting supply and creating the perception of a supply shortage.

3 118. Conspirators regularly attempted to justify their increased production
4 lead times to their customers through contrived excuses like difficulties obtaining raw
5 materials necessary for production (*e.g.*, tantalum ore and powder, aluminum foil, plastic
6 film, dielectric resins), labor shortages, and production and shipping delays caused by
7 natural disasters (*e.g.*, the 2011 Tohoku earthquake and tsunami, typhoons in Asia, and
8 flooding in Thailand and other countries where Conspirators' capacitor manufacturing
9 facilities are located). Although some of these events may have temporarily had some
10 genuine effect on production, the nature and extent of that impact was exaggerated by
11 Conspirators to account for their artificially constrained supplies of Affected Capacitors
12 and increased prices.

13 119. Additionally Conspirators engaged in bid-rigging so that each could
14 "mutually secure a market share" without having to meaningfully lower its target prices.
15 Competitors for common customers coordinated their respective bids for business in
16 order to allocate market shares consistent with their production capacities, agreeing in
17 advance which seller should "win" the bid and what their respective initial and final
18 offers should be to guarantee the desired outcome.

19 120. As a result of Conspirators' bid-rigging, customers were prevented
20 from negotiating competitive prices for the products they purchased and were forced to
21 pay Conspirator's collusive overcharges.

22 **B. Conspiratorial Meetings**

23 121. At least by 1997 and continuing throughout the Conspiracy Period,
24 certain Conspirators attended regular and ad hoc meetings in which sensitive competitive
25 information regarding Capacitors was exchanged and minimum prices were set.

26 122. Each of these meetings constituted overt acts in furtherance of the
27 Conspiracy.

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1 123. These meetings were an outgrowth of regular industry gatherings
2 dating back to the 1980s in which the participants exchanged historical summary pricing
3 and sales data.

4 124. Based on the information disseminated and agreements reached at
5 these different cartel meetings, the Conspirator attendees agreed to price Affected
6 Capacitors collusively, stand united against price reduction demands, and set production
7 and delivery dates to collusively control supply in the Affected Capacitors markets.

8 125. Meeting rosters and notes indicate that Defendants ELNA, Hitachi,
9 Holy Stone, Matsuo, Nissei, Nitsuko, Okaya, Shinyei, Shizuki, Soshin, Taitsu, and
10 TOSHIN KOGYO participated in, were informed of, and/or were discussed at, the
11 cartel's regular meetings.

12 126. The participants at these cartel meetings generally represented their
13 corporate families on the whole and did not make known to the other participants any
14 divisions in interest between the various affiliated entities on whose behalf they appeared.

15 127. All participants understood that the other participants in cartel
16 activities entered into agreements and understandings with one another on behalf of all
17 entities within their respective corporate enterprises.

18 128. As such, participants in meetings, communications, and other
19 activities undertaken to effectuate the Conspiracy were agents of, and made commitments
20 for, their full corporate families.

21 129. This is reflected in records of meetings throughout the Conspiracy
22 Period, which do not distinguish between entities or officers within a single corporate
23 enterprise or corporate family. Instead, membership rosters, reports, and minutes from
24 cartel meetings identify corporate enterprises, usually by the abbreviated name of the
25 ultimate corporate parent (*e.g.*, "ELNA," "Hitachi," etc.).

26 130. Certain cartel meeting participants held multiple positions with both
27 their parent companies and the parent's subsidiaries, underscoring the fact that their
28

1 conspiratorial actions were simultaneously undertaken for the benefit of various corporate
2 affiliates. For example:

3 (a) Zenichiro Uehara—General Manager for Soshin Co.’s Sales
4 Department who served as both President and a Managing Director of Soshin America—
5 attended JFC meetings.

6 (b) Takehisa Okumura—General Manager and Sales Supervisor
7 of Shinyei Tech, who served as both President and Chairman of the Board of Shinyei
8 America—also attended JFC meetings.

9 131. Conspirators, including Defendants Hitachi, ELNA, and Matsuo
10 each played a key role in organizing the cartel’s regular meetings and coordinating the
11 operation of the cartel during the Conspiracy Period. Each of these Conspirators
12 manufactured both electrolytic capacitors (*i.e.*, aluminum and/or tantalum) and film
13 capacitors and had global presence in the Affected Capacitors markets. Hitachi and
14 Matsuo regularly attended cartel meetings where attendees fixed prices for both
15 electrolytic and film capacitors. This overlap of membership between the electrolytic and
16 film capacitors groups allowed the Conspirators involved in the cartel to integrate and
17 coordinate their collusive efforts.

18 132. The participant rosters would occasionally change when cartel
19 members agreed to exclude from the meetings, at least for a time, certain Conspirators
20 that were suspected of cheating on the cartel through using the competitively sensitive
21 information they received through the cartel’s operation for their own individual benefit.

22 133. Cartel meetings took various forms and were known by various
23 names throughout the Conspiracy Period.

24 134. Between 1999 and 2003, various Conspirators attended periodic
25 regional group meetings, including the KCC Meetings (regarding sales in the Kangai
26 region of Japan), and Hananoki meetings (regarding sales in the Hananoki region of
27 Japan). During these meetings, sales and production statistics and sensitive market
28 information were shared.

1 135. “ECC” (Electrolytic Capacitor Company) Meetings also occurred
2 regularly throughout this period. There were two types of ECC Meetings: monthly
3 meetings that were attended by managerial-level employees and biannual meetings
4 attended by upper-level executives. Various Conspirators regularly attended these ECC
5 Meetings.

6 136. ECC Meetings included discussions about individual and collective
7 pricing of aluminum capacitors. Members would complain if other members were
8 pricing their products too low.

9 137. The Foreign Trade Committee of the ECC discussed overseas
10 business, including pricing for those markets. Attendees of the Committee meetings
11 agreed to restrain trade on a global basis, including with respect to U.S. sales.

12 138. “TC” (Tantalum Capacitors) Meetings were held from at least 2001-
13 2003. These meetings also involved pricing discussions and the exchange of sensitive
14 competitive information.

15 139. An organizational chart reflects the Chair Companies and Audit
16 Companies for the TC Meetings from 2001 through 2007. Included on the chart were
17 Defendants Hitachi, ELNA, and Matsuo. A 2002 TC Meeting Trade Committee Roster
18 reflects the same members.

19 140. In 2003, the ECC and TC Meetings were combined, resulting in
20 regular “ATC” (Aluminum Tantalum Capacitors) meetings, at which Defendants Hitachi,
21 ELNA, and Matsuo were regular participants.

22 141. In 2005, the ATC Meetings were renamed the “MK” (Marketing) or
23 Market Study Group Meetings. These ATC/MK Meetings were held periodically
24 through at least 2010.

25 142. Monthly ATC/MK Meetings were attended by manager-level
26 employees of various Conspirators—including Defendants ELNA, Matsuo, and Hitachi.
27 These meetings focused on the exchange of competitively sensitive data, such as
28 production and sales volumes, current and future excess capacity, current and future

1 pricing, raw material pricing and access issues, as well as various other statistics.
2 Representatives of each Conspirator in attendance would make a presentation regarding
3 his company's sales situation.

4 143. Biannual ATC/MK meetings were attended by the Conspirators'
5 high-level executives. During these meetings, each company's executive would give a
6 formal presentation regarding the current market landscape for their products, complete
7 with current and historical sales performance and profitability data for both Japanese and
8 overseas markets (including the U.S.), current customer requests, industry trends, and
9 future pricing and production intentions for aluminum and tantalum capacitors. During
10 these meetings, participants would frequently recommend inflated prices to be
11 implemented by the other cartel members.

12 144. During these meetings, Conspirators also discussed and agreed on
13 the uniform denial of customers' price reduction requests, and how such denials should
14 be handled and justified, as well as the uniform prices to be charged.

15 145. An "Overseas Trade Sectional Meeting" of the "ATC Group" was
16 formed at least as early as 2003. The attendees at these meetings discussed sales of
17 aluminum and tantalum capacitors in non-Japanese markets (*i.e.*, including the United
18 States), and prices were mutually agreed upon among the participants. Representatives
19 from Defendants ELNA, Matsuo, and Hitachi participated in the "Overseas Trade
20 Sectional Meeting" discussions.

21 146. Meeting minutes from the August 31, 2003 joint session of the
22 Overseas Trade Sectional Meeting of the ATC Group provided the following mission
23 statement: "The purpose of the meeting is to exchange information by market and by
24 capacitor category so that each company will be able to enjoy profits and that healthy
25 market prices will be maintained."

26 147. These same minutes reflect specific discussions of U.S. sales, noting
27 the stagnation of ELNA's U.S. business, but also noting that "GM is enjoying brisk sales
28 (Business circumstances vary among Big 3)."

1 148. From at least 2007 to at least 2009, various Conspirators also
2 attended “JFC” (Japanese Film Capacitors) meetings every few months.

3 149. During these meetings, individual pricing and profits data regarding
4 film capacitors was shared and participants agreed on concerted price increases.

5 150. A 2008 JFC Membership List reflects that the following Defendants
6 were members: Okaya, Shinyei, Soshin, Taitsu, TOSHIN KOGYO, Nissei, Nitsuko, and
7 Hitachi.

8 151. Specific examples of collusive activity that occurred at the regular
9 cartel meetings include:

10 (a) May 13-14, 1999 ECC Meeting: Executives from at least
11 Defendants Hitachi, ELNA, and Nitsuko attended. Conspirator attendees shared detailed
12 information regarding their productions, sales, and profits for Affected Capacitors.

13 (b) Various Conspirators, including Defendants Nitsuko,
14 Nichicon, Taitsu, TOSHIN KOGYO, Shizuki, Hitachi, Soshin, and Shinyei, attended
15 cartel meetings held during the 3rd Quarter of 2002. At the meetings, Conspirator
16 attendees discussed, among other things, demand for film capacitors in the United States,
17 and exchanged competitively sensitive, non-public information concerning volumes of
18 sales and shipments for products that used film capacitors.

19 (c) Various Conspirators, including Defendants Nitsuko, Soshin,
20 Shizuki, TOSHIN KOGYO, Okaya, and Hitachi, attended cartel meetings held during the
21 4th Quarter of 2002. At these meetings, Conspirator attendees discussed, among other
22 things, specific Conspirators’ recent and historical pricing for tantalum capacitors and
23 their strategies regarding price increases.

24 (d) Various Conspirators, including Defendants Nitsuko, Soshin,
25 TOSHIN KOGYO, Shizuki, Taitsu, Nissei, and Hitachi, attended cartel meetings held
26 during the 1st Quarter of 2003. At these meetings, Conspirator attendees discussed,
27 among other things, business conditions in the United States, and competitively sensitive,
28 non-public information concerning demand for film and electrolytic capacitors.

(e) Various Conspirators, including Defendants Nitsuko, Soshin, Taitsu, Nissei, TOSHIN KOGYO, Nippon Chemi-Con, Shizuki, and Hitachi, attended cartel meetings held during the 2nd Quarter of 2003. At these meetings, Conspirator attendees discussed, among other things, the volumes of film capacitors they had shipped and the prices per unit, and anticipated increases in Affected Capacitor prices.

(f) Various Conspirators, including Defendants Hitachi, Nichicon, Rubycon, ELNA, and Matsuo, attended cartel meetings held during the 3rd Quarter of 2003. At these meetings, Conspirator attendees discussed, among other things, their common goals to maintain high prices for Affected Capacitors and prices of Affected Capacitors for U.S. automotive manufacturers.

(g) Various Conspirators, including Defendants Hitachi, Nissei, Soshin, Taitsu, Nitsuko, TOSHIN KOGYO, and Shinyei, attended cartel meetings held during the 2nd Quarter of 2004. At these meetings, Conspirator attendees discussed, among other things, specific Conspirators' anticipated price increases to export customers.

(h) Various Conspirators, including Defendants Taitsu, TOSHIN KOGYO, Nissei, Nitsuko, and Hitachi, attended cartel meetings held during the 4th Quarter of 2004. At these meetings, Conspirator attendees discussed, among other things, overseas conditions for the market for film capacitors.

(i) Various Conspirators, including Defendants Hitachi, ELNA, Matsuo, Taitsu, Nissei, Nitsuko, Soshin, TOSHIN KOGYO, and Shinyei, attended cartel meetings held during the 2nd Quarter of 2005. At these meetings, Conspirator attendees discussed, among other things, certain Conspirators' refusal to lower prices in response to a request from large customers.

(j) Various Conspirators, including Defendants Nissei, Nitsuko, Soshin, ELNA, Taitsu, TOSHIN KOGYO, Shinyei, Hitachi, Nichicon, and Matsuo, attended cartel meetings held during the 3rd Quarter of 2005. At these meetings,

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1 Conspirator attendees discussed, among other things, coordinating pricing for Affected
2 Capacitors in the 3rd and 4th Quarters of 2005.

3 (k) Various Conspirators, including Defendants ELNA and
4 Matsuo, attended cartel meetings held during the 4th Quarter of 2005. At these meetings,
5 Conspirator attendees discussed, among other things, coordinating their activities at the
6 highest levels through regular meetings of senior officials in charge of Affected
7 Capacitors sales.

8 (l) Various Conspirators, including Defendants Hitachi,
9 TOSHIN KOGYO, Okaya, Taitsu, Shinyei, Nitsuko, Nissei, and Soshin, attended cartel
10 meetings held during the 1st Quarter of 2006. At these meetings, Conspirator attendees
11 discussed, among other things, market conditions, pricing intentions, plans with respect
12 to entering or not entering specific market sectors, and information shared at trade
13 association meetings.

14 (m) Various Conspirators, including Defendants Hitachi, ELNA,
15 and Matsuo, attended cartel meetings held during the 2nd Quarter of 2006. At these
16 meetings, Conspirator attendees discussed, among other things, coordinating their
17 activities at the highest levels through regular meetings of senior officials in charge of
18 Affected Capacitors sales.

19 (n) Various Conspirators, including Defendants ELNA, Hitachi,
20 and Matsuo, attended cartel meetings held during the 3rd Quarter of 2006. At these
21 meetings, Conspirator attendees discussed, among other things, coordinating their
22 activities at the highest levels through regular meetings of senior officials in charge of
23 Capacitors sales.

24 (o) Various Conspirators, including Defendants Okaya, Taitsu,
25 Nissei, Hitachi, Soshin, ELNA, and Matsuo attended cartel meetings held during the 4th
26 Quarter of 2006. At these meetings, Conspirator attendees discussed, among other
27 things, domestic and global capacitor market share and conditions.

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(p) Various Conspirators, including Defendants ELNA, Matsuo, Okaya, Soshin, Taitsu, Nissei, Nitsuko, Hitachi, Shinyei, and TOSHIN KOGYO, attended cartel meetings held during the 2nd Quarter of 2007. At these meetings, Conspirator attendees discussed, among other things, market conditions for film capacitors by appliance.

(q) Various Conspirators, including Defendants Matsuo, Nissei, Nitsuko, Hitachi, Soshin, TOSHIN KOGYO, and Shinyei, attended cartel meetings held during the 3rd Quarter of 2007. At these meetings, Conspirator attendees discussed, among other things, the cartel's agreement to increase prices.

(r) Various Conspirators, including Defendants ELNA, Taitsu, Nitsuko, Okaya, Hitachi, Soshin, TOSHIN KOGYO, Shinyei, and Nissei, attended cartel meetings held during the 4th Quarter of 2007. At these meetings, Conspirator attendees discussed, among other things, their plans to increase film capacitor prices, despite customer requests for price reductions. The Conspirator attendees also discussed specific pricing intentions regarding specific customers.

(s) Various Conspirators, including Defendants TOSHIN KOGYO, Hitachi, Soshin, Nitsuko, Nissei, Okaya, Taitsu, and Shinyei, attended cartel meetings held during the 2nd Quarter of 2008. At these meetings, Conspirator attendees discussed, among other things, customer pricing, including implementing price hikes and non-Japan market conditions. Specifically, certain of the Conspirator attendees agreed to stabilize prices and resist customer efforts to request price reductions.

(t) Various Conspirators, including Defendants Matsuo, ELNA, and Hitachi, attended an MK meeting on July 10, 2008. Conspirator attendees discussed their companies' Affected Capacitors production and sales statistics and current and future pricing information, as well as market and product trends affecting production costs and demand. The participants agreed to collective price increases for ECAP manganese tantalum capacitors. A report from that meeting states: "A request for cooperation has been made in relation to price of, and the mark-up (differences between

1 the domestic and international prices) of halogen-compatible ECAP/OS-CON [aluminum
2 capacitors].”

3 (u) Various Conspirators, including Defendants Nissei, Okaya,
4 Taitsu, Shinyei, Hitachi, and Toshin, attended a JFC Meeting on September 16, 2008. At
5 the meeting, Conspirator attendees discussed sales and production trends and data and
6 status reports regarding price hike negotiations with customers of film capacitors. A
7 report of that meeting entitled “Movements of Other Companies” details the sensitive
8 competitive information exchanged at this meeting and states, in part, “[w]e decided to
9 accept the film price hike effective on April 1.”

10 (v) Various Conspirators, including Defendants Matsuo, ELNA,
11 and Hitachi, attended an MK Meeting on October 8, 2008. Conspirator attendees
12 presented their respective Affected Capacitors sales data and agreed that the market
13 conditions were poor and sales would significantly decrease in the remainder of the year.
14 Firms agreed that struggling to improve their businesses would only cause further
15 decreases in prices and profitability, but that constraining supply of Affected Capacitors
16 would allow them to demand higher prices. Downward sales forecasts for North America
17 were specifically discussed.

18 (w) Various Conspirators, including Defendants Nissei, Taitsu,
19 Shinyei, Okaya, Soshin, Matsuo, ELNA, and Hitachi, attended cartel meetings during the
20 4th Quarter of 2008. At these meetings, Conspirator attendees discussed, among other
21 things, implementing film capacitor price increases, current production status, market
22 conditions in foreign markets, including North America, and ending price competition on
23 film capacitors.

24 (x) Various Conspirators, including Defendants Okaya, Toshin
25 Kogyo, Nissei, Nitsuko, Shinyei, Shoshin, and Taitsu, attended a JFC Meeting on
26 February 13, 2009. At this meeting, Conspirator attendees exchanged sensitive sales and
27 profits data and discussed future pricing intentions.

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(y) Various Conspirators, including Defendants Matsuo, ELNA, and Hitachi, attended a MK Meeting in April 2009. Conspirator attendees discussed product and industry specific demand levels. In particular, participants discussed current demand levels for Affected Capacitors in the United States, including as a function of the performance of major U.S. automobile manufacturers (“Car-related demand may fall in and after May if things do not go well for the Big Three of the United States”).

(z) Management executives of various Conspirators, including Defendants Matsuo, ELNA, and Hitachi, attended a MK Meeting in May 2009. Conspirator attendees discussed their companies' respective production and demand levels and diminishing MLCC prices. Participants noted that business in the U.S., "where demand arises principally for industrial machinery, equipment, and cars," was "in a slump."

(aa) Various Conspirators, including Defendants Matsuo, ELNA, and Hitachi, attended an MK Meeting in June 2009. Conspirator attendees discussed widespread under-supply of aluminum capacitors as a result of their concerted supply constraint.

(bb) Various Conspirators, including Defendants Matsuo, Hitachi, and ELNA, attended an MK Meeting in July 2009. Conspirator attendees discussed individual current and anticipated sales volumes and pricing structures and corrections.

(cc) Various Conspirators, including Defendants Hitachi and ELNA, attended an MK Meeting in August 2009. Conspirator attendees discussed collectively maintaining E-CAP production at 70% of each company's capacity, which had effectively reversed the supply-demand imbalance, allowing Conspirators to continue to "choose or reject each order" as "all manufacturers have order backlogs" and the "demand-supply situation [was] tight." Participants chastised a Conspirator for cheating on applicable price-fixing agreements.

(dd) Various Conspirators, including Defendants ELNA, Matsuo, and Hitachi, attended an MK Meeting in September 2009. Conspirator attendees

1 discussed “price recovery activities” for combatting the strong yen and high crude oil
 2 prices. As usual, participants also exchanged sensitive competitive information
 3 pertaining to their respective pricing, demand, and profitability. A report of the meeting
 4 noted that it would push “price recovery negotiations” for “US\$ basis customers.”

5 (ee) Various Conspirators, including Defendants Matsuo, ELNA,
 6 and Hitachi, attended an MK Meeting in October 2009. Conspirator attendees discussed
 7 their current pricing, profitability, and sales trends in particular industries and markets,
 8 including the United States. A Conspirator noted that it had “[a]lready raised prices by
 9 150% [on manganese tantalum capacitors], and it came to a profitable level price-wise.”
 10 ELNA reported that its ECAP aluminum capacitors sales “[f]or U.S. automotives” were
 11 “in a situation of being transported by air through Fedex every week.”

12 (ff) Various Conspirators, including Defendants Matsuo, ELNA,
 13 and Hitachi, attended an MK meeting in November 2009. A report of the meeting states,
 14 “[a]lthough all companies are in a good atmosphere in terms of order reception, profit
 15 hasn’t been made due to the effects of exchange rates. Price increase has been on the
 16 topic. There is intention for increasing prices of aluminum polymer (rolled-up type) but
 17 no such talk on tantalum polymer.” A participant in the meeting reported that it was
 18 “conducting negotiations for price increase mainly with overseas customers.”
 19 Participants exchanged sensitive competitive information regarding current and future
 20 pricing for various aluminum and tantalum capacitor models.

21 (gg) Various Conspirators, including Defendants Matsuo, ELNA,
 22 and Hitachi, attended an MK Meeting in January 2010. The Conspirator attendees
 23 exchanged sensitive information regarding pricing and profitability and reported high
 24 orders across the board. Conspirator attendees noted the continuing “tight supply-and-
 25 demand” for manganese tantalum capacitors, but noted declining demand for other
 26 Capacitors as a result of MLCCs. Hitachi reported on the upcoming acquisition of its
 27 tantalum and niobium business by Holy Stone.

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(hh) Various Conspirators, including Defendants Matsuo, ELNA, Holy Stone, Okaya, Taitsu, TOSHIN KOGYO, Shinyei, and Nissei, attended cartel meetings held in the 2nd Quarter of 2010. At these meetings, Conspirator attendees discussed, among other things, their current sales data, current pricing information, industry and specific customer demands and trends, capacity, future Affected Capacitors production intentions, and costs of raw materials.

(ii) Various Conspirators, including Defendants ELNA, Matsuo, Okaya, Taitsu, TOSHIN KOGYO, and Shinyei, attended cartel meetings held in the 3rd Quarter of 2010. At these meetings, Conspirator attendees discussed, among other things, drastic price increases in prices of Affected Capacitors.

(jj) Various Conspirators, including Defendants ELNA, Matsuo, Okaya, Taitsu, TOSHIN KOGYO, and Shinyei, attended cartel meetings held in the 4th Quarter of 2010. At these meetings, Conspirator attendees discussed, among other things, large increases in the prices of film capacitors, and refusing to do business with customers who did not accept the increase.

(kk) Various Conspirators, including Defendants ELNA, Matsuo, Okaya, Taitsu, TOSHIN KOGYO, and Shinyei, attended cartel meetings held in the 1st Quarter of 2011. At these meetings, Conspirator attendees discussed, among other things, industry trends, information shared at JEITA meetings, and coordinating their activities at the highest levels through regular meetings of senior officials in charge of Affected Capacitors sales.

(ll) Various Conspirators, including Defendants ELNA, Matsuo, Okaya, Taitsu, TOSHIN KOGYO, and Shinyei, attended cartel meetings held in the 2nd Quarter of 2011. At these meetings, Conspirator attendees discussed, among other things, implementing price increases.

(mm) Various Conspirators, including Defendants Okaya, Taitsu, TOSHIN KOGYO, and Shinyei, attended cartel meetings held in the 3rd Quarter of 2011. At these meetings, Conspirator attendees discussed, among other things, order flow for

1 film and aluminum capacitors, and price increases imposed for film capacitors used in
2 televisions.

3 (nn) Various Conspirators, including Defendants Okaya, Taitsu,
4 TOSHIN KOGYO, Shinyei, Nissei, and Nitsuko, attended cartel meetings held in the 4th
5 Quarter of 2011. At these meetings, Conspirator attendees discussed, among other
6 things, profits obtained due to higher prices imposed over the last year, and vowed to
7 each other to not cut prices despite competition from Taiwanese and Korean capacitor
8 manufacturers.

9 (oo) Various Conspirators, including Defendants Okaya, Hitachi,
10 Nissei, Taitsu, TOSHIN KOGYO, Shinyei, and Soshin attended cartel meetings held in
11 the 1st Quarter of 2012. At these meetings, Conspirator attendees discussed proposed
12 increases in prices of film capacitors, and demand for products that utilize film and
13 aluminum capacitors.

14 152. Throughout the Conspiracy Period, smaller meetings were held on
15 an ad hoc basis among subsets of Conspirators with common customers. These meetings
16 often occurred when a customer was asking for a price reduction. The company with the
17 largest share for that customer would invite its competitors to determine a satisfactory
18 price.

19 153. Both during and after these periodic cartel meetings and ad hoc
20 bilateral or multilateral meetings, the participants communicated regarding how to avoid
21 competing among themselves through concerted pricing, bid-rigging, and supply
22 constraint, as well as how to convey their concerted manufacturing, delivery, and pricing
23 changes to customers and the market.

24 154. The full universe of information regarding all of the cartel meetings
25 held in furtherance of the Conspiracy, including the dates of the meetings, the identities
26 of the participants, the topics discussed, and the agreements reached (and by whom) is in
27 the exclusive possession of the Conspirators.

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1 **C. Defendants' U.S.-Based Subsidiaries Marketed, Sold, and Delivered**
2 **Their Parents' Price-Fixed Capacitors in Furtherance of the**
3 **Conspiracy's Purpose**

4 155. When Conspirators reached agreements to fix, raise, maintain or
5 stabilize prices, or constrain supply of Affected Capacitors—whether as a result of formal
6 or informal cartel meetings, ad hoc bilateral or multilateral meetings, or through other
7 communications—they intended for their collusive agreements to impact the pricing and
8 supply for all Affected Capacitors, including those sold in the United States.

9 156. Each Defendant sold its capacitors around the world, including to
10 direct purchasers in the United States, like Plaintiff.

11 157. The Japan-based Defendants having U.S. subsidiaries (ELNA,
12 Hitachi, Okaya, Shinyei, Soshin, Taitsu, Holy Stone) established and acquired those
13 subsidiaries not only to market, sell, and distribute their capacitors in the United States,
14 but also to effectuate and achieve the Conspiracy's aims and purposes.

15 158. These U.S. subsidiaries and affiliates are controlled by officers and
16 managers in Japan and their prices are controlled by their Japan-based Defendant
17 corporate parents.

18 159. These U.S. subsidiaries had no authority to independently set
19 competitive prices. Instead, they were bound by their foreign parents' conspiratorial
20 price-fixing agreements (although it may be true that, from time to time, U.S.-based
21 personnel had authority to charge higher prices than those set by the cartel).

22 160. Because their Japan-based Defendant parents had significant control
23 over all aspects of their business (*e.g.*, Affected Capacitors' supply, pricing, business
24 strategy, customer relations, sales, and personnel decisions), many of the U.S.
25 subsidiaries operated as little more than sales offices in the U.S. for their respective
26 Japan-based Defendant parents. Indeed, as set forth below, many of the Japan-based
27 Defendant parents named their own employees directors, officers or managers of their
28 U.S. subsidiaries, and many of these employees held the U.S. executive positions without

1 ever leaving Japan. As a result, these U.S. subsidiaries were, as intended, able to advance
2 the cartel aims in the United States.

3 **D. Soshin America Advanced the Conspiracy's Aims and Purposes in the**
4 **United States for Soshin Co.**

5 161. Soshin America—Soshin Co.’s wholly-owned U.S. subsidiary
6 identified on Soshin Co.’s website as one of its “Overseas Operations”—sells Soshin
7 Co.’s film capacitors to customers in the United States.

8 162. The vast majority of Soshin Co.’s capacitors sold into the United
9 States are sold through Soshin America, with a limited amount sold through distributors
10 or other authorized resellers.

11 163. Soshin America does not manufacture any of Soshin’s film
12 capacitors sold in the United States; they are all manufactured overseas. Accordingly,
13 Soshin America is dependent on Soshin Co. for the supply of capacitors it markets, sells,
14 or delivers in the United States.

15 164. Soshin’s capacitor sales in the United States are directed and
16 supervised by Soshin Co.’s sales department personnel resident in Japan. Accordingly,
17 all sales planning, strategy, and pricing decisions relating to Soshin capacitors sold in the
18 United States are made by Soshin Co. sales and management personnel in Japan, and
19 Soshin America employees have no discretion or authority to conduct business without
20 authorization from Soshin Co.’s Japan-based sales department.

21 165. From at least 1999 to 2014, nearly all of Soshin America’s directors
22 and officers concurrently held sales or management positions at Soshin Co.

23 166. Soshin Co. personnel holding positions at Soshin America or doing
24 business with the company’s U.S. customers were knowledgeable about the existence of
25 the Conspirators’ cartel, as well as the cartel’s aims and purpose.

26 167. Demand for Affected Capacitors in the United States was regularly
27 discussed among Conspirators, including Soshin. During these discussions, Soshin’s
28 representatives and their fellow cartel members reported on available demand and pricing

1 activity for various global regions, including information specific to the North American
2 capacitor market. Soshin Co. used Soshin America to collect the information exchanged
3 at these meetings.

4 168. Information about Conspirators' price-fixing agreements were
5 disseminated to the Soshin personnel holding positions at Soshin America or doing
6 business with the company's U.S. customers by those who participated in cartel
7 meetings.

8 169. The Soshin personnel that participated in cartel meetings and
9 activities held positions of authority within Soshin Co.'s sales and planning departments.

10 170. Soshin Co.'s complete control over Soshin America's sales
11 operations permitted it to effectuate cartel pricing and sales strategies in the United
12 States.

13 E. **Shinyei America Advanced the Conspiracy's Aims and Purposes in the**
14 **United States for Shinyei Kaisha**

15 171. Shinyei America—Shinyei Kaisha's U.S.-based wholly-owned
16 subsidiary—sells Shinyei branded film capacitors to customers in the United States.

17 172. Shinyei America does not manufacture any of Shinyei's film
18 capacitors sold in the United States; they are all manufactured overseas by Shinyei
19 Kaisha and other affiliates of Shinyei America, including Shinyei Capacitor and formerly
20 Shinyei Tech. Accordingly, Shinyei America is dependent on Shinyei Kaisha to provide
21 it with the capacitors it markets, sells, or delivers in the United States.

22 173. The vast majority of Shinyei's capacitors sold into the United States
23 are sold through Shinyei America.

24 174. Shinyei's capacitors sales in the United States are directed and
25 supervised by Shinyei sales department personnel resident in Japan. Accordingly, all
26 sales planning, strategy, and pricing decisions relating to Shinyei's capacitors sold in the
27 United States are made by Shinyei sales and management personnel in Japan, and Shinyei
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1 America employees have little to no discretion or authority to conduct business without
2 authorization from Shinyei's Japan-based sales department.

3 175. Shinyei Kaisha has regularly assigned key sales and management
4 personnel from subsidiaries such as Shinyei Tech/Shinyei Capacitor to positions at
5 Shinyei America. Personnel assigned to Shinyei America positions regularly perform
6 those duties concurrently with their Shinyei Tech/Shinyei Capacitors duties. Some such
7 personnel perform their Shinyei America duties from Shinyei offices in Japan and
8 therefore are not physically present in the United States.

9 176. Shinyei Tech/Shinyei Capacitor personnel holding positions at
10 Shinyei America or doing business with the company's U.S. customers were
11 knowledgeable about the existence of Conspirators' cartel, as well as the cartel's aims
12 and purpose.

13 177. Demand for Capacitors in the United States was regularly discussed
14 among cartel members, including Shinyei. During these discussions, Shinyei's
15 representatives and their fellow cartel members reported on available demand and pricing
16 activity for Affected Capacitors in various regions, including information specific to the
17 North American capacitor market. Shinyei used Shinyei America to collect the
18 information exchanged at these meetings.

19 178. Information regarding the cartel's agreements regarding pricing and
20 sales were disseminated by those who participated in, or were knowledgeable of, cartel
21 meetings to the Shinyei personnel holding positions at Shinyei America who supervised
22 and oversaw Shinyei America sales staff or did business with the company's U.S.
23 customers.

24 179. The Shinyei personnel that participated in cartel meetings and
25 activities held positions of authority within Shinyei Tech/Shinyei Capacitor.

26 180. Shinyei's control of Shinyei America's sales operations permitted it
27 to effectuate cartel pricing and sales strategies in the United States.

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1 **F. Okaya America Advanced the Conspiracy's Aims and Purposes in the**
2 **United States for Okaya Co.**

3 181. Okaya America—Okaya Co.'s U.S.-based wholly-owned
4 subsidiary—sells Okaya branded film capacitors to customers in the United States.

5 182. Okaya America does not manufacture any of Okaya's film
6 capacitors sold in the United States; they are all manufactured overseas by other Okaya
7 entities. Accordingly, Okaya America is dependent on Okaya Co. to provide it with the
8 capacitors it markets, sells, or delivers in the United States.

9 183. All of Okaya's capacitors sold in the United States are sold through
10 Okaya America.

11 184. Okaya's capacitors sales in the United States are directed and
12 supervised by Okaya Co.'s sales department personnel resident in Japan. For example,
13 materials outlining Okaya's company-wide internal process controls indicate that any
14 price quotations must be approved by the Okaya Co.'s Overseas Sales Group Leader.
15 Accordingly, all sales planning, strategy, and pricing decisions relating to Okaya's
16 capacitors sold in the United States are made or supervised by Okaya sales and
17 management personnel in Japan and Okaya America employees have little to no
18 discretion or authority to conduct business without authorization from Okaya's Japan-
19 based sales department.

20 185. Okaya Co.'s oversight of Okaya America's sales efforts and product
21 pricing is in line with its overall close management of the U.S.-based subsidiary as one of
22 its domestic sales offices.

23 186. Okaya Co. has regularly assigned sales and management personnel
24 to positions at Okaya America. Personnel assigned to Okaya America positions regularly
25 perform those duties concurrently with their Okaya Co. duties. Some such personnel
26 perform their Okaya America duties from Okaya offices in Japan and therefore are not
27 physically present in the United States. Others work in the United States for a period of
28 time, but eventually return to Japan to continue working for Okaya Co.

1 187. Okaya Co. personnel holding positions at Okaya America or doing
2 business with the company's U.S. customers were knowledgeable about the existence of
3 Conspirators' cartel, as well as the cartel's aims and purpose.

4 188. Demand for Affected Capacitors in the United States was regularly
5 discussed among Conspirators, including Okaya. During cartel meetings, Okaya's
6 representatives and their fellow cartel members reported on available demand and pricing
7 activity for Affected Capacitors various global regions, including information specific to
8 the North American capacitor market. Okaya used Okaya America to collect the
9 information exchanged at these meetings.

10 189. Information regarding the cartel's agreements concerning pricing
11 and sales were disseminated by those who participated in, or were knowledgeable of,
12 cartel meetings to Okaya personnel holding positions at Okaya America who supervised
13 and oversaw Okaya America sales staff or did business with the company's U.S.
14 customers.

15 190. Okaya Co.'s control of Okaya America's sales operations permitted
16 it to effectuate cartel pricing and sales strategies in the United States.

17 **G. Taitsu America Advanced the Conspiracy's Aims and Purposes in the**
18 **United States for Taitsu Corp.**

19 191. Taitsu America also lacks corporate separateness from its parent,
20 Taitsu Corp.

21 192. Taitsu America does not manufacture any of Taitsu's film capacitors
22 sold in the United States; they are all manufactured overseas by Taitsu Corp. or Taitsu
23 Corp.'s other business units and subsidiaries. Accordingly, Taitsu America is dependent
24 on Taitsu Corp. to provide it with the capacitors it markets, sells, or delivers in the United
25 States.

26 193. Virtually all of Taitsu's capacitors sold in the United States are sold
27 through Taitsu America.

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1 194. Taitsu's capacitors sales in the United States are directed and
2 supervised by Taitsu's sales department personnel resident in Japan. Accordingly, all
3 sales planning, strategy and pricing decisions relating to Taitsu's capacitors sold in the
4 United States are made or supervised by Taitsu's sales and management personnel in
5 Japan.

6 195. Taitsu America does not have its own domain name. It appears on
7 its parent's website only in its capacity as Taitsu Corp.'s American "Sales Office,"
8 accompanied only by contact information for the "office" and no further corporate details
9 (<http://www.taitsu.co.jp/english/hub/USA/index.html>). The "History of Company"
10 section of Taitsu Corp.'s website states that in 1997 (the year of the Conspiracy's
11 inception) it "[e]stablished distributor Taitsu America, Inc. in U.S.A."

12 196. Taitsu Corp.'s website illustrates Taitsu America as an integral part
13 of "Taitsu's Global Supply Network," which spans North America and Asia
14 (<http://www.taitsu.co.jp/english/hub/>). Taitsu Corp.'s company profile stresses that
15 Taitsu Corp. has "been proactive in overseas expansion of our business in anticipation of
16 globalization. We now have bases in Japan and other parts of the world including the
17 United States" (<http://www.taitsu.co.jp/english/company/>).

18 197. Demand for Affected Capacitors in the United States was regularly
19 discussed among Conspirators, including Taitsu. During cartel meetings, Taitsu's
20 representatives and their fellow cartel members reported on available demand and pricing
21 activity for Affected Capacitors various global regions, including information specific to
22 the North American capacitor market. Taitsu used Taitsu America to collect the
23 information exchanged at these meetings.

24 198. Information regarding the cartel's agreements regarding pricing and
25 sales were disseminated by those who participated in, or were knowledgeable of, cartel
26 meetings to Taitsu personnel holding positions at Taitsu America who supervised and
27 oversaw Taitsu America sales staff or did business with the company's U.S. customers.
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1 199. Taitsu Corp.'s control of Taitsu America's sales operations
2 permitted it to effectuate cartel pricing and sales strategies in the United States.

3 **H. ELNA America Advanced the Conspiracy's Aims and Purposes in the**
4 **United States for ELNA**

5 200. ELNA America also lacks corporate separateness from ELNA Co.

6 201. ELNA America does not manufacture any of ELNA's Affected
7 Capacitors sold in the United States; they are all manufactured overseas by ELNA Co. or
8 ELNA Co.'s other business units and subsidiaries. Accordingly, ELNA America is
9 dependent on ELNA Co. to provide it with the capacitors it markets, sells or delivers in
10 the United States.

11 202. Virtually all of ELNA's capacitors sold in the United States are sold
12 through ELNA America.

13 203. ELNA's capacitors sales in the United States are directed and
14 supervised by ELNA's sales department personnel resident in Japan. Accordingly, all
15 sales planning, strategy and pricing decisions relating to ELNA's capacitors sold in the
16 United States are made or supervised by ELNA's sales and management personnel in
17 Japan.

18 204. ELNA America's "About Us" page asserts that it (a) has been a
19 "wholly-owned subsidiary of ELNA Co. Ltd." for over 35 years; (b) is "responsible for
20 sales, service, and support to customers in North and South America;" and (c) has
21 customers in "all market segments of the electronics industry." The "Locations"
22 webpage depicts a global network of ELNA Co.'s worldwide offices. The "Products"
23 and "News" webpages directly link to the "Capacitors" and "News release" webpages of
24 ELNA Co.'s website, respectively.

25 205. ELNA Co.'s website (www.elna.co.jp/en/) likewise shows a lack of
26 corporate separateness from ELNA America. ELNA Co.'s "Corporate profile & History"
27 webpage states that ELNA Co. established "ELNA AMERICA INC., as the sales
28 company in the USA" in March 1977 (<http://www.elna.co.jp/en/company/data.html>).

1 The “News release” webpage has posted consolidated balance sheets for ELNA Co. and
2 its consolidated subsidiaries (including wholly-owned ELNA America) dating back to
3 2005.

4 206. Unlike ELNA Co.’s website, ELNA America’s website does not list
5 an independent board of directors.

6 207. Demand for Affected Capacitors in the United States was regularly
7 discussed among Conspirators, including ELNA. During cartel meetings, ELNA’s
8 representatives and their fellow cartel members reported on available demand and pricing
9 activity for Affected Capacitors in various global regions, including information specific
10 to the North American capacitor market. ELNA used ELNA America to collect the
11 information exchanged at these meetings.

12 208. Information regarding the cartel’s agreements regarding pricing and
13 sales were disseminated by those who participated in, or were knowledgeable of, cartel
14 meetings to ELNA personnel holding positions at ELNA America who supervised and
15 oversaw ELNA America sales staff or did business with the company’s U.S. customers.

16 209. ELNA Co.’s control of ELNA America’s sales operations permitted
17 it to effectuate cartel pricing and sales strategies in the United States.

18 **I. Hitachi Chemical America Advanced the Conspiracy’s Aims and**
19 **Purposes in the United States for Hitachi Chemical**

20 210. Hitachi Chemical America also lacks corporate separateness from
21 Hitachi Chemical.

22 211. Hitachi Chemical America did not manufacture any of Hitachi’s
23 Affected Capacitors sold in the United States; they were all manufactured overseas by
24 Hitachi Chemical or Hitachi Chemical’s other business units and subsidiaries (including
25 Hitachi AIC). Accordingly, Hitachi Chemical America is dependent on Hitachi
26 Chemical to provide it with the capacitors it markets, sells, or delivers in the United
27 States.

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1 212. Virtually all of Hitachi's capacitors sold in the United States were
2 sold through Hitachi Chemical America.

3 213. Hitachi's capacitors sales in the United States were directed and
4 supervised by Hitachi's sales department personnel residing in Japan. Accordingly, all
5 sales planning, strategy, and pricing decisions relating to Hitachi's capacitors sold in the
6 United States were made or supervised by Hitachi's sales and management personnel in
7 Japan.

8 214. Hitachi Chemical's website (www.hitachi-chem.co.jp/english/) lists
9 Hitachi Chemical America on its "Hitachi Chemical Group [Overseas]" webpage.

10 215. Hitachi Chemical America is the "[r]egional head quarter for Hitachi
11 Chemical group companies in the U.S.A." and is responsible for "[s]ales & marketing of
12 functional materials and advanced components and systems" and "R[esearch] &
13 D[evelopment] in biotechnology ([http://www.hitachi-
14 chem.co.jp/english/company/group.html#usa](http://www.hitachi-chem.co.jp/english/company/group.html#usa))."¹⁰ Per Hitachi Chemical's website, the
15 "Hitachi Chemical Group Identity" is a "globally shared structure of our philosophy and
16 values."

17 216. Hitachi Chemical posted consolidated financial reports for itself and
18 its consolidated subsidiaries (including Hitachi Chemical America) in its 2014 Annual
19 Report.

20 217. Demand for Affected Capacitors in the United States was regularly
21 discussed among Conspirators, including Hitachi. During cartel meetings, Hitachi's
22 representatives and their fellow cartel members reported on available demand and pricing
23 activity for Affected Capacitors various global regions, including information specific to
24 the North American capacitor market. Hitachi used Hitachi Chemical America to collect
25 the information exchanged at these meetings.

26 218. Information regarding the cartel's agreements regarding pricing and
27 sales were disseminated by those who participated in, or were knowledgeable of, cartel
28 meetings to Hitachi personnel holding positions at Hitachi Chemical America who

1 supervised and oversaw Hitachi Chemical America sales staff or did business with the
2 company's U.S. customers.

3 219. Hitachi Chemical's control of Hitachi Chemical America's sales
4 operations permitted it to effectuate cartel pricing and sales strategies in the United
5 States.

6 **VIII. ANTICOMPETITIVE EFFECTS OF THE CONSPIRACY**

7 220. Defendants' concerted and collusive actions as alleged herein
8 artificially inflated the prices of Affected Capacitors in the U.S. and abroad.

9 221. In spite of oversupply, waning demand, and a severe global
10 recession, throughout the Conspiracy Period, Affected Capacitors prices decreased less
11 than they would have under ordinary free market conditions, stabilized, and in some
12 instances, even increased.

13 222. As a result, Plaintiff and other purchasers collectively paid
14 overcharges totaling hundreds of millions of dollars or more for trillions of capacitors
15 purchased throughout the Conspiracy Period.

16 223. In 2005, aluminum capacitors began to stop their price decline from
17 approximately \$55.06 per thousand in 2003. In 2005, industry data shows that the price
18 per unit for aluminum electrolytic capacitors was \$46.76 per thousand units, and the per-
19 unit prices hovered between approximately \$40.00 and \$46.00 per thousand until 2013.

20 224. In 2005, film capacitors demonstrated a price increase of nearly
21 \$1.63 per thousand units from 2004, and the per unit price continued to rise on most types
22 of film capacitors until at least the beginning of 2009, after which the price of film
23 capacitors declined at times, though this decline was less severe than it would have been
24 in an unfettered market due to the Conspirators' cartel.

25 225. Economic analysis of the impact of the cartel is in its earliest stage,
26 and much of the relevant information is in the possession and control of Conspirators and
27 not Plaintiff, so the full nature and extent of the Conspiracy's anti-competitive effects are
28 unknown to Plaintiff at this time.

1 **IX. CURRENT U.S. AND INTERNATIONAL ANTITRUST**
2 **INVESTIGATIONS INTO ANTICOMPETITIVE PRACTICES IN THE**
3 **CAPACITORS INDUSTRY**

4 226. Defendants' conspiracy to artificially raise, maintain, or stabilize
5 prices for aluminum, tantalum, and film capacitors and to restrict the output of Affected
6 Capacitors, was first discovered in or around 2014 by law enforcement and regulatory
7 authorities in the United States and throughout Asia.

8 227. In April 2014, the DOJ Antitrust Division confirmed to industry
9 sources that the government had opened an investigation into price fixing in the Affected
10 Capacitors industry.

11 228. The San Francisco office of the DOJ's Antitrust Division is leading
12 the DOJ's ongoing investigation into the Affected Capacitors industry.

13 229. Conspirator Panasonic became the first Conspirator to approach U.S.
14 and Chinese authorities to self-report its involvement in the conspiracy and to request
15 prosecutorial leniency and amnesty.

16 230. As a required part of applying for leniency through the Antitrust
17 Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA"), Panasonic
18 admitted to price-fixing in the Affected Capacitors market. ACPERA provides criminal
19 and civil leniency benefits for the first price fixing conspiracy participant who voluntarily
20 comes forward and admits its anticompetitive conduct to the DOJ.

21 231. In connection with its ACPERA application, Panasonic proffered
22 facts and documents regarding the scope of its conspiratorial conduct. Plaintiff draws
23 support for many of the allegations pled herein from that information.

24 232. On September 2, 2015, the DOJ announced the first criminal charges
25 in connection with the Conspiracy—against NEC TOKIN. The DOJ's Information
26 against NEC TOKIN dated the Conspiracy from "at least as early as September 1997"
27 until "in or about January 2014," and charged that the Conspiracy sought "to suppress
28 and eliminate competition by fixing and rigging bids of certain electrolytic capacitors in

1 the United States and elsewhere.” The Information further alleged that NEC TOKIN
2 “knowingly joined and participated in the charged conspiracy from at least as early as
3 April 2002 until in or about December 2013.” At a hearing held before the Honorable
4 James Donato of the United States District Court for the Northern District of California
5 on January 21, 2016, NEC TOKIN pleaded guilty “to the violation of Section 1 of the
6 Sherman Act, 15 U.S.C. § 1, that is charged in the Information.”

7 233. On April 7, 2016, the DOJ announced that Hitachi Chemical agreed to
8 plead guilty to conspiring with competitors to fix prices for electrolytic capacitors sold to
9 customers in the United States and elsewhere. Like the DOJ’s information against NEC TOKIN,
10 the DOJ’s information against Hitachi also dated the Conspiracy from “at least as early as
11 September 1997” until “in or about January 2014.” The Information charged Hitachi Chemical
12 with conspiring with its competitors between 2002 and 2010. On June 9, 2016 Hitachi Chemical
13 pled guilty to conspiring with its competitors to fix the prices of electrolytic capacitors as
14 charged in the Information.

16 234. The DOJ has reportedly been coordinating its efforts to investigate
17 the capacitors industry with the People’s Republic of China’s National Development and
18 Reform Commission (“NDRC”), an agency entrusted with regulating price-related
19 anticompetitive activity by the Chinese State Council.

20 235. On or about July 2, 2014, the NDRC publicly confirmed its
21 investigation into the capacitors industry through a report published in the China Price
22 Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the
23 NDRC’s Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that
24 one Japanese capacitor company self-reported its cartel activity in March 2014, and that
25 this company along with other Japanese capacitor manufacturers held regular conferences
26 to exchange market information related to their products. Media and industry sources
27 have quoted Xu as saying that the Japanese manufacturer seeking amnesty would receive
28 complete leniency.

1 236. On March 29, 2016, the Japan Fair Trade Commission (“JFTC”)
2 issued Cease and Desist Orders and Surcharge Payment Orders against a number of
3 Conspirators, including Defendants Hitachi and Matsuo, for their participation in the
4 Conspiracy. The orders were the product of an on-going investigation that the JFTC
5 began in or about June 2014 after Panasonic self-reported its involvement in the
6 Conspiracy. According to media reports citing sources close to the JFTC’s investigation,
7 sales executives and other officials from the Conspirators discussed and agreed upon
8 price increases for Affected Capacitors for at least several years during the Conspiracy
9 Period.

10 237. Since the beginning of 2014, investigations into the capacitors
11 industry also have been opened by the South Korean Fair Trade Commission, the
12 Taiwanese Fair Trade Commission, the European Commission’s competition authority,
13 and Brazil’s Council for Economic Defense (CADE).

14 238. On December 9, 2015, the South Korean Fair Trade Commission
15 determined that a number of Conspirators, including Defendants Elna and Matsuo,
16 violated the Korean Fair Trade Act by exchanging sensitive business information and
17 reaching agreements to restrain competition in Affected Capacitors.

18 239. In November 2015, the European Union’s antitrust regulator filed
19 charges against ten Asian manufacturing companies that it suspects may have
20 participated in a cartel to influence the sale of Affected Capacitors.

21 240. In December 2015, Taiwan’s Fair Trade Commission imposed a
22 record fine of approximately \$176.6 million on ten international capacitor suppliers for
23 price collusion and joint monopolization; Taiwan’s Fair Trade Commission Vice
24 Chairman, Chiu Yung-ho, stated that the ruling was reached as a result of a joint
25 investigation with the European Union, Singapore, and the United States.

26 241. Sources suggest that certain of the Conspirators have been subject to
27 raids orchestrated by authorities from around the world. To date, a few of the
28 Conspirators have publicly commented about their being subject to these raids.

1 242. During March 2014, the NDRC conducted several raids on Chinese
2 operations of Japanese capacitors manufacturers. Following Chinese action, there have
3 been reported raids in the European Union, Japan, and Korea.

4 243. Conspirator Panasonic confirmed that it was raided by both the
5 JFTC and South Korean authorities.

6 244. Defendant NEC TOKIN confirmed that it was contacted or raided by
7 American, Chinese, and European authorities and has stated that it is cooperating with
8 authorities.

9 245. Defendant TOSHIN KOGYO confirmed that it was contacted by
10 Japanese, Chinese, and Taiwanese authorities.

11 **X. FRAUDULENT CONCEALMENT, EQUITABLE TOLLING, AND THE**
12 **CONTINUING TORT DOCTRINE**

13 246. During the Conspiracy Period, Plaintiff had neither actual nor
14 constructive knowledge of the pertinent facts upon which its claims are predicated,
15 despite diligence in trying to discover such facts. Plaintiff could not have discovered
16 through the exercise of reasonable diligence the existence of the Conspiracy alleged
17 herein until in or about March 2014, when investigations by the DOJ and competition and
18 law enforcement authorities in the People's Republic of China, Japan, Taiwan, South
19 Korea and the European Union were first made public.

20 247. Conspirators knew their activities were illegal and therefore agreed
21 to keep the Conspiracy, their meetings regarding the Conspiracy, and all documents
22 evidencing the Conspiracy highly confidential, even within their own companies.

23 248. Conspirators did not take or distribute official minutes or reports
24 concerning the secret cartel meetings discussed above because they recognized sensitive
25 competitive information was exchanged amongst them during these meetings. Any
26 disclosure of the matters, information, and data discussed in the many cartel meetings
27 attended by Conspirators throughout the Conspiracy Period could expose the Conspiracy,

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1 thereby frustrating its purpose and exposing Conspirators to criminal and civil liability
2 throughout the globe, including in the United States.

3 249. A 2006 email reflects Conspirators' efforts to keep their collusive
4 actions secret: “[E]xchanging information is useful. . . . However, it may become a
5 double-edged sword at times. To the extent possible, try to exchange verbally so that no
6 evidence is left behind. Especially pricing figures and important presentation materials.”

7 250. The secret cartel meetings are evidenced by emails, summaries, and
8 notes drafted by the employees of Conspirators who attended the meetings. These
9 documents, which evince Conspirators' collusive discussions and unlawful agreements,
10 were circulated only among a limited number of employees who were responsible at their
11 respective companies for implementing the cartel's anticompetitive agreements. These
12 emails, summaries, and notes regularly included instructions from their authors to guard
13 the documents with the utmost caution due to the sensitive competitive information
14 contained therein.

15 251. For example, October 2008 MK meeting notes included the
16 following warning: “Since [t]he gathering should not be disclosed to the public, please
17 be careful when handling the contents of the present report.”

18 252. An October 15, 2005 email regarding a customer's frustrations with
19 undersupply and excess lead times warned that “information leakage regarding this
20 matter would cause grave problems that would lead directly to a suspension of
21 transaction. We urgently request you to take the utmost care in this matter.”

22 253. Similar conspiratorial correspondences read, “[p]lease do not
23 distribute this email unless it is absolutely necessary[,]” “[p]lease take the utmost care in
24 handling this report[,]” and, “[o]nce you read this email, please delete it.”

25 254. Conspirators also guarded the identities of Conspirators and their
26 relevant employees by using code to refer to such participants in written communications,
27 e.g., “Company E,” “Company H,” “Company M,” “Company N,” “Company NC,”
28 “Company R.”

1 255. Conspirators further concealed the Conspiracy from Affected
2 Capacitors consumers by providing pre-textual justifications for the pricing changes and
3 the reductions in output and increased production lead times that occurred during the
4 Conspiracy Period, citing materials shortages, labor shortages, and weather events.

5 256. For example, in 2010, Conspirators each made a number of public
6 statements to industry and technology media in which they attributed supply limitations
7 and price quote adjustments to shortages of aluminum foil and increasing costs for other
8 raw materials required for manufacturing.

9 257. With respect to tantalum capacitors, Conspirators cited a worldwide
10 shortage of tantalum. In 2010 and 2011, Conspirator Panasonic made a number of public
11 statements to industry and technology media attributing supply limitations and pricing
12 adjustments for its tantalum electrolytic capacitors to raw materials supply issues.

13 258. These explanations are belied by industry and other media reports
14 that criticize the lack of true visibility into the market for tantalum, highlight tantalum
15 capacitor manufacturers' close ties and business arrangements with tantalum mining
16 operations, and recognize manufacturers' efforts to process certain raw materials in-
17 house.

18 259. Conspirators also made numerous misleading excuses to justify their
19 price increases, including alleged labor shortages and shipping delays due to weather
20 events in Asia.

21 260. More specifically, from 2011 to 2013, Conspirators, including
22 Defendants Hitachi and ELNA, attributed their production delays to the lasting effects of
23 the 2011 Tohoku earthquake and tsunami in eastern Japan.

24 261. Conspirators' pre-textual, materially false, and misleading
25 statements were designed to conceal their conspiracy and convince Plaintiff and other
26 customers that the artificially high Affected Capacitors pricing and increased production
27 lead times were the natural result of ordinary market forces, rather than the product of
28 any conspiracy.

1 262. As a result of the fraudulent concealment of the Conspiracy by
2 Defendants and their co-conspirators, the running of any applicable statute of limitations
3 has been tolled with respect to any claims that Plaintiff has as a result of the
4 anticompetitive and unlawful conduct alleged herein.

5 263. Also as a result of Defendants' fraudulent concealment of the
6 Conspiracy, Defendants are equitably estopped from asserting statutes of limitations
7 defenses.

8 264. Further, the multi-year Conspiracy constitutes a continuing tort, and
9 therefore, the statute of limitations cannot accrue until the last act of Conspirators'
10 unlawful conduct.

11 **XI. PLAINTIFF'S INJURIES**

12 265. Plaintiff suffered direct, substantial, and reasonably foreseeable
13 injuries as a purchaser of Affected Capacitors as a result of the Conspiracy.

14 266. Plaintiff purchased Affected Capacitors directly from certain of the
15 Conspirators at prices that were artificially inflated as a result of the Conspiracy.

16 267. Throughout the Conspiracy Period, Conspirators controlled the
17 market for Affected Capacitors, forcing Plaintiff to purchase Affected Capacitors at
18 artificially inflated prices.

19 268. Accordingly, Plaintiff suffered antitrust injury in connection with its
20 purchases of Affected Capacitors during the Conspiracy Period, in an amount equal to the
21 total of the overcharges it paid, to be determined at trial.

22 **XII. CLAIM FOR RELIEF**

23 **Restraint of Trade in Violation of the Sherman Act § 1,**
24 **15 U.S.C. § 1 (Alleged against all Defendants)**

25 269. Plaintiff hereby incorporates and re-alleges each and every
26 allegation set forth in the preceding paragraphs of this Complaint.

27 270. Beginning no later than September 1, 1997 and continuing through
28 approximately March 31, 2014 (the exact dates being unknown to Plaintiff and

1 exclusively within the knowledge of Conspirators), Defendants and their co-conspirators
2 entered into a continuing contract, combination, or conspiracy to unreasonably restrain
3 trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) by
4 artificially reducing or eliminating competition for the pricing of aluminum, tantalum,
5 and film capacitors sold directly to U.S. purchasers.

6 271. In particular, Defendants and their co-conspirators have agreed,
7 combined, and conspired to raise, fix, maintain, or stabilize the prices of aluminum,
8 tantalum, and film capacitors sold to United States purchasers during the Conspiracy
9 Period.

10 272. As a result of Defendants' unlawful conduct, prices for Affected
11 Capacitors were raised, fixed, maintained, and stabilized in the United States.

12 273. The agreement, combination, or conspiracy among Defendants and
13 their co-conspirators consisted of a continuing agreement, understanding, and concerted
14 action among Conspirators.

15 274. For purposes of formulating and effectuating their agreement,
16 combination, or conspiracy, Defendants and their co-conspirators did those things they
17 contracted, combined, or conspired to do, including:

18 (a) Participating in meetings and conversations to discuss pricing
19 and supply of Affected Capacitors;

20 (b) Allocating customers and market shares between themselves
21 through bid-rigging;

22 (c) Communicating (both orally and verbally) to fix target prices,
23 floor prices, and price ranges for Affected Capacitors;

24 (d) Agreeing to manipulate prices and supply of Affected
25 Capacitors sold in the U.S. in a manner that deprived direct purchasers of free and open
26 competition;

27 (e) Issuing price announcements and price quotations in
28 accordance with the agreements reached;

(f) Selling Affected Capacitors to customers in the U.S. at noncompetitive prices;

(g) Exchanging competitively sensitive information, including customer information and sales data;

(h) Setting artificial and unjustified production lead times to limit the available supply of Affected Capacitors available for sale to U.S. purchasers during the Conspiracy period.

(i) Providing false statements to the public to explain increased prices and undersupply for Affected Capacitors;

275. As a result of the unlawful conduct and acts undertaken in furtherance of the Conspiracy by Defendants and their co-conspirators, Plaintiff's business and property were injured, in that Plaintiff paid more for Affected Capacitors than it would have paid in the absence of Conspirators' unlawful conduct.

XIII. DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff demands judgment in Plaintiff's favor and against Defendants adjudging and decreeing that:

A. Defendants engaged in a contract, combination, and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and that Plaintiff's business and property were injured as a result of Defendants' violations;

B. Plaintiff shall recover damages sustained by it as provided by the federal antitrust laws, and a joint and several judgment in favor of Plaintiff shall be entered against the Defendants in an amount to be trebled in accordance with such laws, including Section 4 of the Clayton Act;

C. Plaintiff shall be awarded pre-judgment and post-judgment interest on the damages it suffered, and such interest shall be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

D. Plaintiff shall recover its costs and fees incurred in this suit, including reasonable attorneys' fees as provided by applicable law; and

1 E. Plaintiff shall receive such other or further relief as may be just and proper.

2 **JURY TRIAL DEMANDED**

3 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury
4 of all the claims asserted in this complaint so triable.

5
6 Dated: August 19, 2016

By: /s/ Amy Abdo

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